The Solicitors' Journal

VOL. LXXXIII. **Saturday, June 17, 1939.** No. 24

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than 1 p.m. Thursday, and be addressed to The Manager at the above address.

Current Topics.

Secretaryship of The Law Society.

READERS will learn with regret of the retirement of Sir EDMUND RALPH COOK, C.B.E., LL.D., who for twenty-five years has occupied the position of secretary of The Law Society, and they will endorse the appreciation of his services contained in the current issue of *The Law Society's Gazette*. "His generous help and advice," our contemporary states, "have always been available to successive Presidents of the Society and to members of the Council and to any solicitors who have wished to consult him; his life interest has been the advancement of the profession for which he has laboured devotedly, sometimes to the detriment of his health, and the tact which he has displayed in dealing with representatives of the various bodies with which the Society is constantly in contact has been outstanding. The improvement which has taken place during the last twenty-five years in the position held by the Society is largely due to him." It may be recalled that Sir EDMUND, who was admitted in 1894, and joined the staff of The Law Society in 1907, was appointed Assistant Secretary in 1909 and Secretary in 1914. In 1930 he was made a Commander of the Order of the British Empire for his services in connection with the establishment of the Poor Persons Procedure, and four years later received the honour of knighthood. The honorary degree of Doctor of Laws was conferred upon him last year by the Victoria University of Manchester. It is announced that the Council of The Law Society has appointed Mr. T. G. LUND Secretary of the Society on the retirement of Sir EDMUND COOK. Mr. LUND joined the staff of The Law Society in 1930, was appointed Joint Assistant Secretary in 1937, and Assistant Secretary in the following year, on the retirement of Mr. H. E. JONES. Mr. LUND'S previous position is to be taken by Mr. E. H. V. MCDOUGALL, who was admitted in 1933 and joined the staff of The Law Society in 1938.

Lords' Dissenting Judgments.

A RECENT letter in *The Times* deprecating the publication of dissenting opinions in the House of Lords has evoked from LORD DUNEDIN, no doubt a weighty authority on such a question, a reply strongly in favour of maintaining the present practice. Despite this plea, however, for the continuance of allowing each of the learned lords expressing his individual opinion, there is much to be urged in favour of making the final appellate tribunal utter its decision with no uncertain voice. As someone has said, we read dissenting judgments for professional edification, but as these have no binding authority, it seems a pity that they should be added to the already serious bulk of judicial pronouncements. What all litigants and most of the profession desire is a clear expression of the legal principles governing the question in dispute, not legal essays by those august law lords who sit on the scarlet benches of the Upper House, however learned and interesting they may be.

Reports of Speeches in the House of Commons.

A MATTER of some general interest was recently raised in the House of Commons by Mr. ORR-EWING, who asked the Deputy Speaker, Sir DENNIS HERBERT, whether there was any means by which members might correct mistakes in the *Official Report* of their speeches in such a way as to make such corrections known before the publication of the bound volume. The previous night he had taken a part, for only a very few moments, at the end of a long debate on the Colonial Office Vote, and when he read the report on the following morning he noted that his remarks had not been accurately reported. The inaccuracies themselves were not very large, but the general effect became very misleading. The same member repudiated any desire to criticise or attack those responsible for the framing of the *Official Report*, and said that he shared the feeling of the entire House of immense gratitude for the extremely efficient way in which that work was carried on in trying circumstances. His reason for raising the question was that he had been speaking on matters which had been the subject of a very close survey by a Royal Commission, of which he had been as a member of the House also a member for some months during the previous year, and he felt it to be highly undesirable that anyone reading reproductions of the report in the Colonial Press, or any other Press, should feel that any member of the Royal Commission, and particularly in this case a member of the House, should be capable of making such inaccurate and rather ridiculous statements as he was recorded as having made. He emphasised

that he could only be to blame himself for any inaccuracies that occurred in the report; probably he was not clearly heard in the Press Gallery, though he was not so informed.

The Deputy Speaker's Reply.

In reply Sir Dennis Herbert intimated that the only method by which members could get transcripts of their speeches corrected before the daily report went out was by applying to the reporters immediately afterwards to get proofs. In the particular case that had been practically impossible owing to the fact that the speech was made at the end of the debate. Misreporting must necessarily take place sometimes in the daily report. It was a matter—and he included himself—on which all of them had suffered from time to time. The Deputy Speaker recognised the special importance of a correct report on the occasion giving rise to the question. All that he (the Deputy Speaker) could say to the hon. member was, that no doubt his having raised the matter in the House would give such publicity to what he had said that those who were particularly concerned and interested might apply to him or to the reporters, with whom no doubt the hon. member would communicate in order to find out what was the correct procedure. Mr. Maclean asked if it were not the fact that it had became the general practice among a number of members, immediately they made a speech, to go to the reporters' room and alter the speech, and sometimes the speech that appeared the following morning in the *Official Report* differed completely from the speech as delivered; and he wished that Sir Dennis Herbert, in his capacity as Deputy Speaker, would warn members that it was not a practice which they should follow to alter speeches they had delivered so that they appeared next morning entirely different from what they had spoken in the House. The Deputy Speaker said that Mr. Maclean was quite right in saying that members were making a practice of getting proofs of their speeches in order to make some corrections, and intimated that this was all to the good, provided that all the alterations that were made were legitimate. Sir F. Fremantle indicated that there was a Select Committee, of which he was chairman, specially formed to deal with reports of debates and proceedings, and if any matter of the kind raised required further consideration it was the business of the committee which they would gladly deal with. Apart from its general importance, the matter raised is of particular interest to ourselves, in view of our policy of keeping readers abreast, so far as considerations of space permit, with the progress of Bills and indicating the views expressed by members in the course of their passage through, or on their rejection by, Parliament.

Common Law and Contributory Negligence.

The report to the Lord Chancellor of the Law Revision Committee, which was presided over by Lord Wright and which considered whether the common law doctrine of contributory negligence requires modification, has recently been published as a White Paper by H.M. Stationery Office (Cmd. 6032, price 4d. net). It is pointed out that the Maritime Conventions Act, 1911, except in so far as it varies the proportion in which damages may be divided, does not alter the old Admiralty rule under which, if a collision results from the negligence of two parties, the damage done to each was added together and was shared between them equally. In this the Admiralty rule differed from that obtaining at common law under which if the fault of each party contributed to an accident neither party could recover from the other—however little the one and however greatly the other was to blame—for the damage done, provided there was negligence by both which to some appreciable extent could be said to be a cause of the damage. The substantial recommendation of the committee is that the Admiralty rule should be adopted in cases hitherto governed by the common law. The committee does not, however, recommend any change in the method of ascertaining whose the fault may be, nor does it suggest that what has been inaptly called the "last opportunity rule" should be abrogated. In truth there is no such rule; the question, as in all questions of liability for a tortious act, being not who had the last opportunity of avoiding the mischief but whose act caused the wrong. The committee indicates that the adoption of the change suggested would not only bring the rule affecting cases now governed by the common law rule into line with that of the Admiralty Courts, but would also assimilate English law to that of many European countries and of some of the Canadian Provinces and North American States. The committee is not impressed with the objection that it will be difficult for a jury to determine the degree of blame attributable to each party and to apportion damages accordingly. It will, it is urged, be less difficult for a jury to do so than to determine the cause to which the accident must be attributed, and if—as is suggested—the matter is to be dealt with on broad lines the committee is of opinion that any reasonable jury will be capable of assessing the damages with sufficient accuracy. The Admiralty Court, it is indicated, has no difficulty in apportioning the damages under the rule proposed to be adopted, and although the decision in such cases is that of a judge and not of a jury, the experience of the courts in Canada seems to show that a jury also is capable of making the required apportionment.

Motor Patrols.

The subject of motor patrols was considered by the House of Lords last week when the following resolution, which was moved by Lord Sandhurst, was debated: "That His Majesty's Government should immediately implement the recommendation of the Select Committee on Prevention of Road Accidents that a substantial grant should be made to the police without delay to enable them to increase the number of motor patrols." In the result the resolution was carried by thirty-four votes to twenty-five—a majority of nine against the Government. Lord Sandhurst urged that the cost of the patrols, which were doing national work, should be borne by the Exchequer. Motor patrols were life-savers. Education and propaganda had been urged in the report of the Select Committee; but to start education without patrols would be like starting a school without teachers. Moreover, if the counties with large road mileage and low rateable values were going to be saddled with patrols the same as smaller counties with short mileage roads and high rateable values, farmers and others in the low rateable districts were going to find the situation impossible. Motorists, the same speaker continued, were already paying several millions a year more than the total amount spent on road improvements and maintenance; and if they got in this case a reasonable plan with some of the money they contributed to make the roads safer for all users, they would have no cause to complain. Earl Howe alluded to the successful experiment in Lancashire, which showed that casualties could be reduced by 46 per cent., and urged that the Government ought not only to continue the experiment but to extend it throughout the country. Lord Alness said that the motor patrol system had done more to help the cause of road safety than the help received from any other quarter and maintained that delay in extending the system to the rest of the country was not merely dangerous but fatal. The Earl of Cottenham stated that the scheme was producing results on a scale that no other since the War had achieved, and urged that if an extension of the scheme of training and using motor patrols could not be afforded in any other way, it should be looked upon as the first charge on the Road Fund.

Costs of the Scheme.

Earl De La Warr, President of the Board of Education, replying on behalf of the Government, agreed that where the mobile police had been tried they had been very successful,

and he recalled that the experiments had been conducted under a special financial agreement whereby, for a limited period, the Exchequer was to bear the cost. But if the motion before the House were accepted, the alternatives before the Government would be either to pay the local authorities 100 per cent. grant for what was still considered to be a local service, or to start a national police force for this service. The same speaker alluded to the difficulties of existing conditions generally and indicated that the proposed scheme would cost £2,500,000 a year. He did not say that the Government were not prepared to put up any money for the purpose, but they were not prepared to go beyond the 50 per cent. grant for the purpose. If the local authorities were prepared to back the scheme, the Government would be prepared reluctantly to make a 50 per cent. grant. The President of the Board of Education undertook to submit to the Home Secretary the above-mentioned proposal by LORD COTTENHAM, and also to convey the strength of the feeling which had been expressed in the debate. EARL STANHOPE, First Lord of the Admiralty, urged that the question was one which went to the whole foundation of the policy of the grants made between the central Government and the local authorities. The Government were not opposed to the extension of the motor patrols; but that was not only a Government service but also a local service. If the Government paid the whole, the local authorities did not mind what they spent. The suggestion that the Government should make a special grant for the purpose would mean upsetting a whole series of arrangements. For that reason the Government were unable to accept the motion. Notwithstanding the difficulties brought out in the course of this and the other speech referred to in the present paragraph, it may be suggested that the urgency of the problem is paramount. As VISCOUNT CECIL said, every year 6,000 people are killed and about 250,000 people are injured on the roads. If action is postponed, these casualties are to be allowed to continue.

Motor Insurance and a "Legal Right."

A WRITER to *The Times* recently drew attention to the fact that an applicant for a motor insurance policy is required to state whether he has been refused by a previous company, and if such be the case the company to which application is made seeks information from the previous company and on such information may refuse the insurance. The information is secret and an applicant may be refused by a series of companies and find himself in a position of being unable to drive although holding a licence to do so. Insurance companies, it is urged, have much greater power than magistrates, who after due investigation and trial can suspend a driver's licence for a specified length of time, for they can nullify a driving licence for an indefinite length of time for undisclosed reasons. "An individual or a body of individuals," the writer concluded, "acting in their private capacity are not legally obliged to give service on application or give a reason for refusing it, but this should surely not obtain when the application for service is forced on the applicant by law and a refusal nullifies a legal right." One might reply that in view of the statutory obligation imposed by the Road Traffic Acts a driving licence does not *per se* confer on the holder a legal right to drive; but apart from such verbal niceties it may be doubted whether, as a general rule, any substantial injury is done by the *de facto* disqualification of such persons whom insurers refuse to accept, while the benefit to the community derived from the absence of such would-be drivers from the roads may be regarded as not inconsiderable. The writer of the letter above referred to was prompted by circumstances that had lately come within his knowledge. Doubtless there may well be hard cases, but the considerable competition which exists for motor insurance, and the fact (as stated by another writer to *The Times* on this subject) that every effort is made to provide at least the insurance required by the Road Traffic Acts, must surely render the number of such cases infinitesimal.

The Civil Defence Bill.

THE Civil Defence Bill was recommitted in respect of certain clauses and amendments last Monday, when the House of Commons agreed to an amendment moved by Sir J. ANDERSON, Lord Privy Seal, the object of which was to meet criticisms which had been made in connection with the provisions for compensation and restoration of premises designated for purposes of air-raid shelter or other civil defence purposes. The Lord Privy Seal explained that the effect of the new proposals would be that as soon as the local authority decided to cancel the designation of premises for those purposes they should serve notice on all parties concerned. It would then be open to anyone interested to give notice that he desired the premises to be restored, whereupon the local authority came under an obligation to restore the premises as far as practicable—not necessarily completely. Alternatively the authority might give notice that it preferred not to undertake any work but to pay compensation in respect of any injury suffered.

Recent Decisions.

IN *Beaumont-Thomas* v. *Blue Star Line, Ltd.* (*The Times*, 26th May), the Court of Appeal (SCOTT, CLAUSON and GODDARD, L.JJ.) reversed a decision of LORD HEWART, C.J., and held that the respondent, who was a passenger on a cruise and who claimed damages for personal injuries sustained as the result of slipping on the wet floor of a ship's corridor which was being washed, was precluded from recovering by a condition (which was printed on the back of the ticket) that passengers took upon themselves "all risk whatsoever of the passage to themselves their baggage and effects . . ." Apart from such condition, SCOTT, L.J., pointed out that the duty of a common carrier of passengers, unlike a carrier of goods, was only to use due care and skill (see *Rutter* v. *Palmer* [1922] 2 K.B. 87), and intimated that the fact that a person slipped on a wet floor did not constitute evidence of negligence. Leave was given to appeal to the House of Lords.

In *Inland Revenue Commissioners* v. *Lord Delamere* (*The Times*, 10th June) LAWRENCE, J., reversed a decision of the Special Commissioners and held that certain sums paid to the respondent's children under an ante-nuptial settlement entered into by the respondent were to be deemed the income of the respondent for the purposes of surtax by virtue of s. 21 of the Finance Act, 1936. His lordship intimated that sub-ss. (8) and (10) of the above section must be read together, and negatived the argument that the terms of the settlement did not "provide for" payment to the settlor because payment was entirely in the discretion of the trustees.

In *State of Spain* v. *Chancery Lane Safe Deposit and Offices Co., Ltd., Henry de Reding and Others: Re the Application of de Reding* v. *Dawson* (p. 477 of this issue) SIMONDS, J., dismissed a motion by the defendant in the above-named action asking that the editor of *The Times* might be committed to prison for contempt of court in printing and publishing the report of a speech by General FRANCO containing references to the action, which, it was alleged, was calculated to interfere with the course of justice. The learned judge intimated that there was no reason to suppose that through the publication of the paragraph complained of witnesses were likely to be deterred from coming forward, or that the defendant was likely to be debarred from defending the action in whatever way he thought fit.

In *Rex* v. *Wharton* (*The Times*, 14th June) the Court of Criminal Appeal (LORD HEWART, C.J., and SINGLETON and HILBERY, JJ.) allowed the appeal of one who was convicted at the Central Criminal Court of conspiracy to cause explosions and of possessing explosive substances contrary to ss. 3 (*a*) and 4 of the Explosives Substances Act, 1883, and was sentenced to ten years' penal servitude. In announcing the decision of the court, LORD HEWART, C.J., indicated that the reasons would be given later.

Criminal Law and Practice.

BAIL AND THE NEW CRIMINAL PROCEEDINGS RULES.

QUESTIONS affecting the liberty of the subject are obviously of vital public importance, and the highest degree of vigilance is requisite to guard against any unnecessary alteration of the law in the direction of restricting that elementary right.

Rule 13 of the Rules of the Supreme Court (Criminal Proceedings) Rules, 1938 (S.R. & O., 1938, No. 1576/L.29), published on 22nd December, 1938, to put the matter at its lowest, falls under some suspicion in this respect.

The rule appears under the heading "Bail," and it provides (1) that every application to the High Court for bail in any criminal proceeding where the defendant is in custody shall be made by summons before a judge in chambers to show cause why the defendant should not be admitted to bail either before the judge in chambers or before a justice of the peace, in such amount as the judge may direct; (2) that the summons shall be served on the prosecutor and on the Director of Public Prosecutions, if the prosecution is being conducted by him, and, unless the judge otherwise orders, on the coroner or committing magistrate, at least twenty-four hours before the day named in the summons for the hearing of the application; (3) that every application shall be supported by affidavit and shall be accompanied by a certified copy of the commitment, a copy verified by affidavit of any depositions taken in the proceedings, and an affidavit of the service of the summons.

It has been found in practice that the application of this rule has tended to delay the hearing of applications to a judge in chambers for bail. The procuring of the necessary affidavits undoubtedly occupies time even under the most favourable conditions, and it is almost unnecessary to emphasise that during that time an innocent person may be deprived of his liberty.

The importance of the right of the subject to apply for bail to a judge in chambers in these circumstances is demonstrated by the fact that under s. 23 of the Indictable Offences Act, 1848, where a court of summary jurisdiction commits a person charged with any misdemeanour for trial and does not admit him to bail the court must inform the person accused of his right to apply for bail to a judge of the High Court of Justice. Moreover, it is at least arguable, in spite of Lord Hewart's dictum to the contrary in *R.* v. *Phillips*, 38 T.L.R. 897, 898, that a defendant to a charge of misdemeanour is entitled as of right to bail on an application to the High Court (see *R.* v. *Dennett*, 49 L.T.J. 387; *R.* v. *Atkins*, 49 L.T.J. 421; *In re Frost*, 4 T.L.R. 757; and *R.* v. *Manning*, 5 T.L.R. 139).

No doubt a theoretical case can be made out in support of the new rule, but in practice it operates to diminish the liberty of the subject, and this, it is submitted, should be an overriding consideration in the framing of all new legislation in regard to matters of bail.

SEPARATE TRIALS OF SEPARATE CHARGES.

The danger that tribunals might be influenced in their decisions on facts relating to one criminal charge by their having already heard the facts relating to a different charge is one against which the law affords assistance to advocates and the persons they represent in the criminal courts.

It was clearly laid down in *Hamilton* v. *Walker* [1892] 2 Q.B. 25, that each case ought to stand on its own merits, and that where a person was charged with two separate offences and the magistrates heard the first case, reserved judgment, and then heard the second, and having done so, proceeded to convict on the first case, such a procedure made both convictions bad.

"I am of opinion," said Vaughan Williams, J., "that this course of procedure makes both convictions bad; the first because the magistrates were bound to decide on the evidence given with respect to that particular charge, and the second because the defendant had the right to be in a position to set up the defence that he had already been either acquitted or convicted, as the case may be, on the same facts. It is clear that if there had been a proper conviction or acquittal on the first charge, the second could not properly have been tried afterwards, because, if it were, the defendant would, in substance though perhaps not in form, be tried twice for the same offence. The test is to take the evidence on the second charge, and see whether it would be sufficient to convict if brought forward in the first."

Pollock, B., however, said that there was nothing to show that the justices, in acting on each information, proceeded solely on the evidence applicable to that information. In *Reg.* v. *Fry* (1898), 67 L.J.Q.B. 712, there was ample evidence that the justices, before postponing conviction in the first case, had actually made up their minds to convict, and it was admitted that if the amount of the penalty was the only matter involved in the postponement of the judgment there was nothing illegitimate or improper in the proceeding. See also *Parker* v. *Sutherland*, 86 L.J.K.B. 1052.

A suggestion was recently made by the Divisional Court (*R.* v. *Chambers and Others*, 4th April, 1939, *ante*, p. 439) that the doctrine might be extended to cases in which, though justice is actually done, it appears not to have been done. The facts were that there was a summons for dangerous driving against R and also one against T, fixed for hearing before the same court, and arising out of the same cross-roads collision. After hearing the case against R the justices stated that they would reserve their decision until they had heard the case against T. They heard the case against T and T gave evidence in that case involving R which had not been available at the hearing of the case against R. The justices then retired, and on returning into court found both R and T guilty and fined them.

The deputy-chairman stated in an affidavit that the justices had decided to convict in R's case before hearing the case against T. The case thus appeared to be within *Reg.* v. *Fry*, *supra*. T moved for a rule *nisi* for *certiorari* directed to the justices. The court, in discharging the rule on the ground that there had been no usurpation or excess of jurisdiction, nevertheless made strong comment on the course which the justices had adopted. "Their proper course," said the Lord Chief Justice, "was clearly not merely to form, but also to express, their decision in the first case before taking the second case in hand." He hoped that the kind of procedure which had caused the trouble would not be repeated.

This dictum is a valuable addendum to the law as laid down in *Reg.* v. *Fry*, and if it is followed by magistrates it will remove any sense of grievance that accused persons may feel concerning the conduct of their trial.

The Death Duties and the Budget.

No great changes in death duty law are contemplated in this year's Budget, although the revenue from these duties came short of the estimate by £10,500,000. For this year the estimate is £80,000,000, and to contribute towards this total, estates over £50,000 of persons dying after the 25th April, 1939, are called upon to make a further contribution, estimated at £3,000,000 for this year (cl. 20 of the Finance Bill). This increase is provided for, not by any express change of rates, but by the addition of 10 per cent. to the existing duty. Thus, an estate of £160,000 at the existing rate of 24% would produce £38,400

Under the Budget this is to be increased by 10 per cent. 3,840

making a total of £42,240

Agricultural property, so far as purely agricultural, is not affected (see Finance Act, 1925, s. 23).

There is the usual safeguarding proviso for interests in expectancy sold or mortgaged for full monetary consideration before the 26th April, 1939.

The other provisions affecting death duties are elaborate clauses, Nos. 21 and 22, which are intended to prevent escape of duty under s. 2 (1) (*d*) of the Finance Act, 1894, in the case of annuities and interests arising on death, and under s. 7 (1) of the same Act by forbidding deductions which really represent voluntary benefits conferred by the deceased in his lifetime. Section 2 (1) (*d*) taxes any annuity or other interest purchased or provided by the deceased to the extent of the beneficial interest accruing or arising by survivorship or otherwise on his death. The benefit must have been purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person. It is not sufficient that another person purchases or provides the benefit in concert or by arrangement with the deceased (*Richardson* v. *Inland Revenue Commissioners* [1909] 2 I.R. 597). The general purpose of the sub-section is to prevent a man escaping estate duty by subtracting from his means during life, moneys or moneys worth, which, when he dies, are to reappear in the form of a beneficial interest accruing or arising on his death (*Lethbridge* v. *A.-G.* [1907] A.C. 19). The whole benefit arising is taxable. There is no provision under this sub-section for an allowance in respect of any proportion of the benefit under the concert or arrangement attributable to some other person. Further s. 28 of the Finance Act, 1934, has already provided that no allowance should be made in respect of any interest in expectancy which the beneficiary may have had before the death in the benefit provided by the deceased.

Clause 21 now contemplates extending the liability under s. 2 (1) (*d*) to an annuity or other interest purchased or provided wholly or in part by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased. If it is proved that such property would have been insufficient to provide the whole annuity or interest, liability is to be proportionately reduced. To determine the question of insufficiency and the extent thereof, property derived from the deceased is not to include any part as to which it is proved—

(i) that the person aforesaid was not entitled thereto, and that it was not included amongst his resources, at the time of the purchase or provision; and

(ii) that the disposition of which it, or the property which it represented, was the subject-matter was not made with reference to, or with a view to enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof.

Paragraph 2 provides that the deceased should be deemed to have had an interest in the property so charged, and it does not therefore escape aggregation under the proviso to s. 4 of the Finance Act, 1894. Paragraph 3 assigns comprehensive meanings to the phrases "property derived from the deceased," "disposition" and "subject-matter," so that they include direct dispositions and arrangements promoted by the deceased, other than those for full monetary consideration; and those carried out by intermediate dispositions, whether any such disposition was or was not for full or partial consideration.

Clause 22, which proceeds on lines somewhat similar to those of cl. 21, forbids the deduction under s. 7 (1) (*a*) of the Finance Act, 1894, of debts or incumbrances incurred or created by the deceased to the extent the consideration given therefor consisted of or included—

(*a*) property derived from the deceased; or

(*b*) consideration given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased.

Provision for relief is made where the property derived directly or indirectly from the deceased is insufficient to provide the consideration. To the extent of the excess there is no abatement in respect of the deduction of the debt. But proof on lines similar to those mentioned above in connection with cl. 21 has to be given.

If the deceased pays or discharges such a debt within three years of his death, the money so paid is to be deemed property passing on his death under s. 2 (1) (*c*) of the Finance Act, 1894, and chargeable with estate duty notwithstanding s. 3, which exempts transactions carried out for full consideration in money or money's worth.

The definitions to be used in connection with cl. 21 are also applied to cl. 22.

Both clauses are only to apply in the case of persons dying after the 25th April, 1939.

The term "person" presumably includes a company (Interpretation Act, 1889, s. 19).

The example given in the House of Commons of the type of case which cll. 21 and 22 are designed to meet was on the following lines: A, more than three years before death, settles £100,000 on his wife and/or children, reserving no benefit to himself and giving wide powers of investment. The trustees transfer the sum to a company in exchange for shares. The company lends A £95,000, and takes out a policy on his life, the premiums on which are paid by the company out of the £5,000 remaining in their hands, and out of the interest on the loan payable by A to the company. On A's death his estate is diminished by the debt of £95,000, and the policy moneys are not chargeable with estate duty as they were provided by the company and not by A within the terms of s. 2 (1) (*d*). Under cl. 22, deduction will not be permissible in respect of the debt of £95,000, as the consideration for it represented property derived from the deceased by intermediate disposition. Further, cl. 22 will bring the policy moneys under charge as they will constitute an interest provided by a person whose resources included property so derived.

A simpler example of the type of case affected by cl. 21 may be given where A more than three years before his death makes an absolute gift to his daughter B, who subsequently buys an annuity to commence on A's death, or who takes out a policy on A's life. If in order to complete the transaction, B has to employ some of her own money, or if some other person assists, the provisions with regard to insufficiency may apply on due proof of the facts indicated above.

Another type of case affected arises where the deceased gives, say, £10,000 to his children, who form a private company to which the money is handed in exchange for shares. The deceased agrees to pay an annuity for his life to the company and receives back the £10,000 as the price. The company then effects a policy on his life at the annual premium equivalent to the annuity.

It is evident that difficult questions will arise on cll. 21 and 22. Inquiry may be necessary as to whether at some past date the resources of a person included property derived from the deceased; whether transactions at different periods are so related as to come within the provisions and whether any part of the property or consideration must be attributed to some person other than the deceased.

The annual meeting of the London Council of Poor Man's Lawyers will be held on Tuesday, 20th June, at 5.30 p.m., in the Council Chamber of The Law Society's Hall (Bell Yard entrance) by kind permission of the President and Council. On this occasion the Bentham Committee would be glad to welcome any of the barristers and solicitors who are good enough to conduct cases for the committee and any subscribers to the funds of the committee who may care to attend. Tea will be provided at 5 p.m., and, in order to assist the committee in determining what accommodation will be required, anyone desiring to attend should notify the secretary, Mr. Derek Harbord, 1, Lincoln's Inn Fields, W.C.2.

Company Law and Practice.

New Shares for Old.

It is an extremely obscure point whether or not an arrangement whereby holders of existing shares can surrender those shares in exchange for new shares of an equal amount.

There are a number of cases on the point to which I propose to refer this week, though they are by no means easy to understand.

The first in point of time is *Teasedale's Case*, L.R. 9 Ch. 54. In that case 2,000 £10 shares had been issued by the company. Of those shares, 901 (called X shares) had been fully paid up, while on the other 1,099 shares (called A shares) only £2 10s. had been paid. Special resolutions of the company were passed which had the effect of cancelling the X shares and issuing in their place two shares of £10 each with £5 per share paid thereon, and of cancelling the A shares and issuing in their place one share of £10 with £5 paid up in lieu of every two A shares.

The effect of this proceeding was that the holder of one X share still held shares on which the sum of £10 had been paid up, though he became subject to a new liability for calls, and a holder of one A share still held a share on which £5 had been paid up in place of two shares on each of which £2 10s. had been paid up and their new liability for calls was £5 only instead of £7 10s., as it had been previously. The total liability for calls of the members was, however, increased.

The resolutions were agreed to by all the shareholders, and it was held by the lords justices that the surrender of the old shares made in pursuance of them was valid, and it was pointed out by Sir W. M. James, L.J., that the total uncalled capital of the company had been increased by the operation, which could not possibly prejudice and might benefit the creditors. The lord justice also observed that a company may give itself power to purchase its own shares.

This last observation was overruled by the House of Lords in *Trevor* v. *Whitworth*, 12 App. Cas. 409, and Stirling, J., so held in *Eichbaum* v. *City of Chicago Grain Elevators, Ltd.* [1891] 3 Ch. 459, though he went on to follow the actual decision in that case, holding that that case fell exactly within *Teasedale's Case*.

He also pointed out that Lord Herschell in *Trevor* v. *Whitworth*, in dealing with the question of surrenders of shares, did not lay down any limits within which surrenders must come in order to be valid.

In that case Lord Herschell said that if the surrender was made in consideration of a payment that would be equivalent to a purchase, and therefore bad, if it were accepted in a case where the shares might have been forfeited by the company, it would have been good, since forfeiture was expressly recognised by the Companies Act, and he went on to say: "There may be other cases in which a surrender would be legitimate. As to these, I would repeat what was said by the late Master of the Rolls in *In re Dronfield Silkstone Coal Co.*, 17 Ch. 76: 'It is not for me to say what the limits of surrender are which are allowable under the Act because each case as it arises must be decided upon its own merits.'"

The authorities which we have so far considered therefore support the proposition that a surrender is validly made where old shares are surrendered in exchange for new, and the paid-up capital remains the same and the uncalled capital is not diminished.

It should be noted that such an operation cannot in any way prejudice the creditors of a company or any other persons, and that any objection to this course, if objection there be, must be based on a wholly technical ground.

The question came to be considered again in *Bellerby* v. *Rowland & Marwood's Steamship Co.* [1902] 2 Ch. 14. In that case two directors, in order to relieve the company of a loss which it had incurred, both purported to surrender to the company eighty-three of their shares in the company. At that time £10 per share had been called up and £1 remained unpaid.

Thus the point raised did not involve an exchange of shares, but the case is important for the remarks made during the course of the judgments on the two cases considered above.

In his judgment, Stirling, J., says this: "I wish to add a few remarks with reference to *Eichbaum* v. *City of Chicago Grain Elevators* . . . That case was decided by me on the authority of *Teasedale's Case*, which appeared to me to be precisely in point. There is, however, a difference which was pointed out by Cozens-Hardy, L.J. (so far as I know for the first time), during the argument of the present case, namely, that the resolutions for the surrender of the shares in *Teasedale's Case* were passed in 1865, before the passing of the Companies Act, 1867, while the resolutions in *Eichbaum's Case* were brought forward in 1891, after the passing of that statute. I now think that in these circumstances I ought not to have followed *Teasedale's Case* . . . "

The relevancy of this point appears to be that in the Act of 1867 for the first time provision was made for a company to reduce its capital. And that the cancellation of the old shares in *Eichbaum's Case* should have been regarded as a reduction of capital not made in accordance with the Act.

It is difficult to see how this really distinguishes the case from *Teasedale's Case*, for at the date of the earlier case a company could not in any way reduce its capital, and if the one case involved a reduction of capital, they must both have done so, and if the later reduction was not in accordance with the Acts the earlier one could certainly not have been so.

In *Rowell* v. *John Rowell & Sons*, Warrington, J., took the view that neither case involved a reduction of capital, and that if that had been brought to the notice of Stirling, L.J., he might not have made the remarks he did concerning the decision in *Eichbaum's Case*.

In *Rowell's Case* the scheme which was carried out was for the holders of fully paid 6 per cent. preference shares to surrender them to the company for an equal number of fully-paid 5 per cent. preference shares. The surrendered shares were, however, to be subject to reissue by the board.

Warrington, J., held that it was a valid transaction, and that (1) the surrender did not involve a reduction of capital, and (2) that the new shares were issued as fully paid.

The judgment is by no means easy to understand, and it can be considered by no means safe to act on. See, for example, the criticism of it in "Palmer's Company Precedents," vol. I, 14th ed., at p. 698.

In so deciding, Warrington, J., on the first point, said that a surrender of fully paid shares meant a reduction of capital if the shares are surrendered on terms which did not permit their reissue, but not if they could be reissued, and reissued must in this case mean issued for money or money's worth, for it could not be in anyone's contemplation that the shares which were, in fact, fully paid up should be reissued to anybody free, nor would any such an issue be possible.

In other words, the benefit moving to the company by the surrender is the power to raise capital again on shares in its existing capital which it has already received the subscription moneys in respect of, and also, until it does so, a release from any obligation to pay dividends, and in the case of a winding up to repay capital thereon, and it is difficult to see the difference between this transaction and a purchase by the company of the shares which it is agreed on all hands that a company could not do.

Dealing with this point, Warrington, J., says: "It was a transaction for a consideration on the one side, and on the other that it was not, in my judgment, a purchase of shares," and he does not elaborate the point any further, but goes on to say that since consideration did pass to the company the shares were fully paid up.

Provided it was made plain on the balance sheet of the company that the old shares were to be deemed to be

unissued, creditors of the company could not be prejudiced by such a transaction, but in view of the judgments of the earlier cases it cannot be regarded as safe to surrender old shares for new in the manner adopted in *Rowell's Case*.

A safe method of carrying out such a transaction is to apply to the court for confirmation to a reduction of capital by cancelling the old shares proposed to be got rid of, and then to apply the sums made available by such reduction in paying up on behalf of the members the new shares proposed to be issued.

A Conveyancer's Diary.

The Limitation Act, 1939.

I HAVE just obtained a copy of the Limitation Act, 1939, which received the Royal Assent on the 25th May, and will come into force on the 1st July, 1940.

The Act is intituled "An Act to consolidate with amendments certain enactments relating to the limitation of actions and arbitrations," and repeals amongst other enactments the whole of the Real Property Limitation Act, 1833, and the Real Property Limitation Act, 1874.

There are doubtless many points which will arise upon the Act calling for elucidation. I do not propose in this article to do more than deal with one of the most important of the sections, upon reading which some alterations in the law at once leap to the eye which appear to be, to say the least, astonishing innovations leading to absurd results.

Section 7 (1) of the Act reads as follows:—

"Subject to the provisions of sub-s. (1) of s. 19 of this Act, the provisions of this Act shall apply to equitable interest in land, including interest in the proceeds of sale of land held upon trust for sale, in the manner as they apply to legal estates, and accordingly a right of action to recover the land shall, for the purposes of this Act, but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest in like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land."

So far so good. The provisions of s. 19 (1) referred to apply to actions for breach of trust.

For my present purpose I can pass over the next three sub-sections and come to sub-s. (5), which enacts as follows:—

"Where any settled land or any land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale, not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Act to accrue during such possession to any person in whom the land is vested as tenant for life, statutory owner or trustee, or to any other person entitled to a beneficial interest in the land or the proceeds of sale."

Now, the effect of s. 12 of the Law of Property Limitation Act, 1833, was to confer upon one tenant in common a right to obtain a title by adverse possession against the other or others of them, a right which before that Act did not exist, because the possession of one tenant in common was deemed to be the possession of both or all of them.

Taking only s. 7 (1) of the Act of 1939, it would seem that a similar right would be enjoyed by an equitable co-owner against the other or others. But s. 7 (5) excludes any such right by the concluding words "or to any other person entitled to a beneficial interest in the land or the proceeds of sale."

Thus, supposing a testator devises land to trustees on trust for sale and to divide the proceeds between A, B and C in equal shares. A obtains possession of the whole and takes all the rents and profits for his own use. Under s. 7 (5), A can never obtain a title by possession however long he holds and neither he nor his executors, although continuing in undisturbed possession for any length of time, say for fifty years, can dispose of his original equitable interest only and never obtain a title against B and C or those claiming under them.

Under this Act the Crown is barred after thirty years (instead of sixty years) but an equitable co-owner can never be barred! That appears to me to be absurd.

The existing law is exemplified in the case of *Bolling* v. *Hobday* (1882), 31 W.R. 9.

A testatrix, by her will, devised real estate to trustees in trust for her daughter for life and after her death upon trust for sale and to divide the proceeds between four persons, A, B, C and D, in equal shares. On the death of the testatrix, the tenant for life entered and occupied until her death in 1857. On her death, C and D entered and remained in possession until D's death in 1874. C remained in possession until his death in 1880. The trustees never acted so far as the real estate was concerned and the property was enjoyed by C and D and after D's death by C without interruption or acknowledgment.

It was held by Chitty, J., that the legal estate in fee of the trustees was extinguished by the expiration of twenty years (it would now be twelve years) from the death of the tenant for life and with it the trusts by which it was affected and that it would be wrong to ascribe the possession of C and D which was unlawful for all the purposes of the will, to the supposed lawful title which they each had in respect of one fourth share of the proceeds of sale.

That is now allowed by s. 7 (5) of the Act.

I passed over sub-ss. (2), (3) and (4) of s. 7 because it was the provisions of sub-s. (5) which struck me most at first as open to criticism. There are, however, some equally curious results following from the other sub-sections of s. 7, and other parts of the Act, to which I will draw attention next week.

Landlord and Tenant Notebook.

Landlord's Liability for Nuisance.

WHEN a third party complains of a nuisance on demised premises and seeks to make the lessor liable, various tests may have to be applied. In the recent case of *Metropolitan Properties, Ltd.* v. *Jones* (1939), 83 SOL. J. 399, at least two were referred to. The actual decision in that case went against the plaintiff because he had no interest in the adjoining premises which he occupied: as to which see the "Notebook" of 10th June last, p. 451 of the current volume. But Goddard, L.J., discussed the question whether, if this had been otherwise, the landlords would have been liable, and his lordship's remarks remind us that the answer to this sort of question may depend on various factors. It may be relevant to consider: (*a*) Did the nuisance commence before or after the commencement of the tenancy; (*b*) Does its character of a nuisance depend not only on what is done, but also on how it is used.

The former of these questions is important when the nuisance is or is due to the condition or position of the premises. It was said in *Rosewell* v. *Prior* (1701), 2 Salk. 459, that a tenant for years who erected a house interfering with the plaintiff's right to light and then sub-let the premises was liable, "for he transferred it with the original wrong, and his demise affirms the continuance of it." The matter was gone into at greater length in *Gandy* v. *Jubber* (1864), 5 B. & S. 578, in which damages were claimed in respect of an accident to Mrs. Gandy who had been injured when a grating collapsed under her. The grating was over a cellar and was part of premises let from year to year by the defendant to Mrs. Gandy's neighbour, Mrs. Page, with whom she was conversing when the accident occurred; and it appeared to have been in disrepair for some

years. To appreciate the judgment on the point under discussion, it is necessary to assume that a periodic tenancy implies periodic renewals of the relationship, as was at that time commonly supposed. This being so, Crompton, J., held as follows: "But to bring liability home to the owner, the nuisance must be one which is in its very essence and nature a nuisance *at the time of the letting*, and not merely something which is capable of being thereafter rendered a nuisance by the tenant."

More recently, the case of *St. Anne's Well Brewery Co.* v. *Roberts* (1928), 140 L.T. 1 C.A., the owners of an inn which had been destroyed by the collapse of the retaining wall of property owned by the defendants, sued for the loss so occasioned. One issue was whether the wall was or was not part of premises consisting of a cottage and garden let by the defendants to a weekly tenant; but, apart from that, the facts as to the condition of the wall at material times were difficult to ascertain. The Court of Appeal held, in the end, that the wall was part of the cottage property and that there was no evidence that it was in a ruinous condition at the time of the letting, and reversed the judgment of Acton, J., on this latter ground; but this does not imply disapproval of the following passage from the judgment delivered at first instance: "Where the physical condition of a wall or other structure is the result of a wrong or omission by the owner, as, for instance, where the owner suffers it, while in his possession, to get into an unsafe state so that the whole of it or parts of it fall upon the land or an adjoining house and do damage, such owner cannot rid himself of liability for the possible consequences merely by letting the wall or other structure as a part of the premises to a tenant without taking a covenant from the tenant to repair." This is substantially the position which now obtains; but it should be noted that *Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 56, C.A., has since shown that a tenant's covenant to repair might not protect the landlord if he reserved the right to effect repairs and/or habitually did effect them.

The question whether a landlord is responsible when he supplies the means of nuisance but the tenant operates them is more difficult. The leading case is *Rich* v. *Basterfield* (1847), 4 C.B. 783. The defendant had bought two adjoining buildings, each consisting of a house to which a shop had been added. At that time the shops were heated by stoves with "descending flues" through which smoke passed to the chimneys of the houses. He "improved" them by substituting chimneys for the descending flues, and let the properties to weekly tenants. From the judgment it appears that the first tenant of one shop, a coffee shop, used coke without causing any nuisance; but a subsequent occupier used some other fuel, and the plaintiff, a neighbour, was troubled by smoke in consequence. The defendant's replies to complaints was that he had lit no fires, that his tenants were not his agents, that he was not in occupation of the properties. A judgment against him was set aside on the following lines: "If a landlord lets premises, not in themselves a nuisance, but which *may or may not* be used by the tenant so as to become a nuisance, and it is entirely at the option of the tenant so to use them or not, and the landlord receives the same benefit whether they are so used or not; the landlord cannot be made responsible for the acts of the tenant."

This decision cannot, at first sight, be completely reconciled with the later *Harris* v. *James* (1876), 45 L.J.Q.B. 545, in which the landlord of land let for the purpose of being used as a lime quarry was held liable for the nuisance (smoke, stones and dirt) occasioned by the working of kilns erected by his tenant. "Where a person," said Blackburn, J., "authorises and requires another to commit a nuisance he is liable for that nuisance, and if the authority be given in the shape of a lease he is no less liable," and his lordship said *Rich* v. *Basterfield* was to be distinguished accordingly. It will be observed that the "and requires" condition is not represented in the latter part of the sentence. But the distinction may seem a trifle thin: if a lease implies authority, one would expect that the tenant in the older case could be considered entitled to light a fire, at all events in winter. Hence it is not surprising that Lush, J., who concurred shortly with Blackburn, J., observed that he thought the *Rich* v. *Basterfield* decision "one of excessive refinement."

I think that the truth is that *Rich* v. *Basterfield* was not well reported. (This applies to the version given in 16 L.J.C.P. 273, as well as to that in 4 C.B. 783.) Undue emphasis is laid on the circumstance that the tenant might or might not light fires; and the fact that a former occupier had lit fires using coke as fuel, without causing any discomfort to the plaintiff, which is mentioned in the judgment, is not given in the headnote or in the statement of facts. If this fact be borne in mind, it warrants the proposition that the tenant could have conveniently used the premises for their ostensible purpose without committing a nuisance, but did not.

Now, in *Metropolitan Properties, Ltd.* v. *Jones*, the relevant facts were that the landlords installed a small electric motor in the flat above the defendant's (or what would have been the defendant's if he had had the necessary title). The motor was installed for the benefit of tenants of the upper flat as part of a central heating system, but before the flat was part of the freehold. Owing to faulty technique, the apparatus made an undue amount of noise.

Dealing with the two questions referred to at the commencement of this article, Goddard, L.J., said that the cases of letting ruinous premises did not apply. But his lordship considered the facts to be governed by *Rich* v. *Basterfield* in this way; the motor caused a nuisance when used by the tenant in exactly the way in which it was supposed to be used, and which was the only way in which it could be used.

On one reading of *Rich* v. *Basterfield*—what I might call that of the reporters and that of Lush, J., in *Harris* v. *James*, *supra*—there would be no analogy. For, if the *ratio decidendi* of *Rich* v. *Basterfield* were that the defendant's tenant could sit in the cold if he liked, the same could be said of the upper tenant in the case before Goddard, L.J. But his lordship went on to describe the *Rich* v. *Basterfield* apparatus as a furnace which could be used "either so as to smoke or so as not to smoke. The landlord was held not liable for a nuisance arising from smoke because it was *caused by the tenant and not by him*." This, I suggest, shows that that case was indeed distinguished, and not dissented from, in *Harris* v. *James*.

Our County Court Letter.

HAIRDRESSER AND CUSTOMER.

In *Clarke and Wife* v. *Satchwell and Another*, recently heard at Coventry County Court, the claim was for £80 as damages for negligence during a permanent wave process which the female plaintiff underwent at the defendants' shop on the 18th November, 1938. The plaintiff's case was that an excessive amount of lotion was applied, and insufficient care was taken in mixing it beforehand. Owing to the fine texture of the female plaintiff's hair, it was essential for great care to be taken in the mixing of the lotion. The plaintiff's head was also allowed to become too hot, in spite of her complaint about the heat, which came to the notice of the defendants. The second defendant (who was the first defendant's daughter) was not sufficiently experienced in the work she performed. The defence was a denial of negligence, as everything went well from the start, and the plaintiff had accepted whatever element of risk existed, after this had been explained to her. His Honour Judge Hurst observed that the female plaintiff had taken a morbid view of her injury, and had contributed to the difficulties of the case by exaggerating some of the matters in her evidence. Nevertheless, she had

a right to complain of the methods employed, as there was a connection between the process undergone and the injuries received. The mixing of the lotion was haphazard, and it had been used to excess. The duty lay on the first defendant, when she installed the machine, to take reasonable care to have a skilled operator. Instead, the first defendant had delegated to her daughter, the second defendant, work which the second defendant was too inexperienced to perform. In effect she was sent out to the public to gain experience, which had been gained, but would have to be paid for. The female plaintiff had not had the attention she was entitled to expect, and judgment was given for the plaintiffs for £50, with taxed costs, less a deduction of £15.

THE RIGHTS OF ALLOTMENT HOLDERS.

In *Binley and District Allotments Association, Ltd.* v. *Tookey*, recently heard at Coventry County Court, the claim was for £4 for work done and the counter-claim was for £50 as damages for trespass. The plaintiffs' case was that in March, 1935, they had let a plot of land to the defendant on a half-yearly tenancy at a rent of £1 5s. per half-year, payable in advance. In contravention of the rules, the defendant burned rubbish on his land, thereby causing a nuisance to other allotment holders and to neighbouring residents. The defendant also fell into arrears with his rent, and notice to quit was served on the 20th June, 1938. The arrears of £1 5s. were then paid, and the defendant was permitted to remain until the end of September, on condition that he removed what he termed his "stock-in-trade." This consisted of twenty or thirty tons of boxes, used by the defendant in his business of a garden crate maker. The accumulation was eventually burned by the plaintiffs as rubbish, and the cost of so doing was the amount claimed. The defendant's case was that, from March to September, 1938, he was spending £15 a week on stock to hold. Some seed boxes had in fact been sold by him to the plaintiff's secretary. His Honour Judge Hurst held that the plaintiffs, having the plot of land vacant, had let it to the defendant, but not on an ordinary tenancy. Nevertheless an attempt had been made to bring the tenancy into line with the others, by means not authorised by the rules of the association. The defendant had been treated in a high-handed manner, as if he had no rights after the termination of his tenancy. Judgment was given for the defendant on the claim, and also on the counter-claim for £40, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

DIMINUTION OF WEEKLY PAYMENTS.

In *Morris Motors, Ltd.* v. *Hawker*, at Oxford County Court, the applicants' case was that the respondent had had an accident on a spindling machine on the 17th June, 1937. The middle finger of his right hand was amputated, and, on the 25th June, an agreement was made for the payment of 30s. a week during total or partial incapacity. The pre-accident wages were £5 7s. 6d., and light work was offered, in December, which would have entitled the respondent to earn only 11s. less than before the accident. The medical certificates of the 2nd December, 1937, and the 8th April, 1938, both stated that the respondent was fit for manual work. Evidence was given by a spindling machinist (whose hands had been mutilated in an accident thirteen years ago) to the effect that the respondent could work on a band-saw. Corroborative evidence was given by a doctor. The respondent's case was that he was not yet discharged by his doctor as fit for work, as he suffered pain if he gripped anything. Corroborative evidence was given by two doctors as to the nerve-endings being tender and the grip weak. His Honour Judge Cotes-Preedy, K.C., held that the refusal of the work was unreasonable. An order was made for the diminution of compensation to 5s. 6d. a week.

ACCIDENT ON JOURNEY FOR WAGES.

In *Pilgrim* v. *Royal Mail Lines, Ltd.* at Southampton County Court, the applicant's case was that her husband had been a shore steward. On the 13th November, 1935, he went on board the s.s. "Asturias" to draw his pay sheet for the purpose of collecting the appropriate wages from the respondents' offices. Having been seen leaving the ship, he was later picked up dead, after being apparently knocked down by a railway truck. Although the spot was not on the most direct route to the offices, the fact that the deceased was on his way to collect wages constituted the accident one which arose out of and in the course of the deceased's employment. The respondents' case was that the deceased had no business to be where he was found. If he was on his way to collect wages, as suggested, he was taking a route which had more risks attached to it than the more direct route he should have taken. His Honour Judge Barnard Lailey, K.C., observed that the deceased was not pursuing a route he had been told not to follow. It followed that the accident arose out of and in the course of the deceased's employment. An award was accordingly made of £200 with costs.

EARNING CAPACITY OF ONE-EYED MAN.

In *Mynard* v. *James & Son* at Bletchley County Court, the applicant claimed the continuance of compensation under the Workmen's Compensation Act, 1925, s. 9 (4), as amended by the Act of 1931. The applicant had been a lorry driver, and in October, 1937, he incurred an injury to one eye while unloading metal. The eye was removed in hospital, and full compensation of 27s. a week was paid up to the 15th August, 1938. The applicant refused a reduction to 13s. 6d. a week, and an application for arbitration was adjourned in November for the applicant to try certain work. None was forthcoming, however, and the applicant had tried unsuccessfully to obtain work elsewhere. Although the respondents had offered him work as a painter, the applicant was advised that it would be too great a strain on his one eye. He would also have to pass a special test before resuming lorry driving. The medical evidence for the respondents was that the remaining eye was sound and strong, and would not be influenced by the other eye. After six months' practice, the applicant would be accustomed to working with one eye. His Honour Judge Donald Hurst held that the applicant's earning capacity had been reduced to £2 a week, as against his pre-accident earnings of £2 13s. 6d. a week. An award was accordingly made of 6s. 9d. a week, without costs.

Reviews.

The Law of Mortgages. By Harold Greville Hanbury, D.C.L., M.A., of the Inner Temple, and C. Humphrey Meredith Waldock, B.C.L., M.A., of Gray's Inn, Barrister-at-Law. 1938. Demy 8vo. pp. xl and (with Index) 502. London: Stevens & Son Ltd; Sweet & Maxwell Ltd. £1 5s. net.

This is a book of some 500 pages and yet is bound in such a way as not to appear much larger than the average novel. The size of the book is of some interest because it is intended by its authors to be a comprehensive work without aspiring to vie in magnitude with the better-known historic volumes on the subject of mortgages. The size is also of importance to the student for whom the book has primarily been written and it can be recommended as being portable as well as eminently readable.

It is quite correctly pointed out in the authors' preface that most students are restricted in their researches on mortgages to a chapter in the books on real and personal property. How difficult it is to compress mortgages into such a confined space will no doubt be remembered by the many to whom the subject was an unhappy mystery in their

early days. This book is designed to remedy the deficiency and to bridge the gap between an exhaustive survey and an incomplete and perhaps misleading précis of the law. The result is most successful. The book has sufficient detail to make interesting reading and the authors have original and instructive views of their own on many debatable points which are expressed with clarity and conciseness. The whole field of mortgage is covered including (apart from the huge subject of mortgages of land) bills of sale, mortgages of such choses in action as life insurance policies and shares in companies, mortgage debentures and mortgages of ships. There is an apt quotation from the "Merchant of Venice" at the head of the chapter on the latter class of mortgages. The index is more than adequate for a student's book and the table of cases deserves special attention in that each case has only one Law Report reference and the table is, therefore, simpler and easier to use than is sometimes the case.

Though primarily a student's book, the practitioner who does not possess an up-to-date standard work on mortgages would find this book helpful on most points that are likely to arise in practice.

Books Received.

The Church of England Pensions Board. Twelfth Annual Report, 1938. Demy 8vo. pp. 52. 1939. London: Press and Publications Board of the Church Assembly; Society for Promoting Christian Knowledge. 6d. net.

Tolley's Handbook of Income Tax and Sur-Tax and National Defence Contribution, 1939-40. By CHAS. H. TOLLEY, A.C.I.S., F.A.A. London: Waterlow & Sons, Ltd. 1s. net.

The Inheritance (Family Provision) Act, 1938. By P. W. LEVENS, solicitor, of Malvern. pp. (with Foreword), 15. Printed by the Trinity Printing Co., Ltd., Malvern. 2s. 6d. net.

Voluntary Liquidation. By A. C. HOOPER, solicitor and Notary. Second Edition. 1939. Royal 8vo. pp. 247 (with Appendix and Index). London: Gee & Co. (Publishers), Ltd. 12s. 6d. net.

Executorship Law and Accounts. By RANKING, SPICER and PEGLER. Fourteenth Edition. 1939. Edited by H. A. R. J. WILSON, F.C.A., F.S.A.A. Crown 4to. pp. xlvii and (with Index) 434. London: H. F. L. (Publishers), Ltd. Price 15s. net.

Tax Cases. Vol. XXII. Part II. 1939. London: H.M. Stationery Office. 1s. net.

Obituary.

MR. J. R. C. H. GEDDES.

Mr. James Richard Congreve Hildebrand Geddes, Barrister-at-Law and late a Clerk to the Supreme Court of Judicature, died on Wednesday, 14th June, at the age of sixty. Mr. Geddes was called to the Bar by the Inner Temple in 1902.

MR. J. MOORE-BAYLEY.

Mr. John Moore-Bayley, solicitor, who practised in Birmingham from 1907 to 1924, died on Thursday, 8th June, at the age of fifty-six. He was educated at Malvern College and Oxford. He later became a governor of Malvern College, and endowed classical scholarships. Mr. Moore-Bayley was admitted a solicitor in 1907.

MR. W. E. PICKERING.

Mr. William Emery Pickering, of the firm of Messrs. Pickering and Pickering, solicitors, Stafford, died on Sunday, 11th June, at the age of seventy. Mr. Pickering was admitted a solicitor in 1893.

To-day and Yesterday.

LEGAL CALENDAR.

12 JUNE.—In 1872 there lived in a house in Park Lane a French lady of forty-six and her daughter. They were served by a French cook and an English maid. During the morning of the Sunday after Easter, the girl being on holiday in Paris, her mother went out alone for a walk in the Green Park. She was not seen to return. That evening the cook went out to church but did not come back to sleep. Next day the daughter returned. The house was searched and the body of the lady was found in the locked pantry. The cook, who had killed and robbed her and fled to France, was tried at the Old Bailey on the 12th June and convicted of murder. The defence argued that the killing had been a sudden impulse during a quarrel over length of notice and there was a recommendation to mercy, which eventually won a commutation of the death sentence.

13 JUNE.—In 1885 a public-house transaction split the whole of the King's Bench. A man named Ashwell, after a little friendly drinking, asked an acquaintance called Keogh to lend him a shilling. Keogh obligingly handed him a coin and only next morning realised that it was a sovereign. Ashwell having refused to return it, was prosecuted and convicted of larceny at the Leicester Assizes. The case went to the Court of Crown Cases Reserved, but the five judges there could not agree, and on the 13th June the point was re-argued before Lord Coleridge and thirteen judges. Seven were for affirming the conviction and seven for quashing it. Therefore the rule *præsumitur pro negante* prevailed and the conviction stood.

14 JUNE.—William Palmer, the Rugeley poisoner, was hanged outside Stafford Gaol on the 14th June, 1856, and buried within the prison.

15 JUNE.—On the 15th June, 1822, a girl called Anne Moreton was lying in Newgate under sentence of transportation for stealing a shawl, when her father and mother and a young admirer waited on the governor assuring him in the most earnest manner that they had undeniable proof of her innocence and the perjury of her accuser. Investigation led to the papers being sent to the Home Secretary, her admirer adding an ardent letter declaring the state of his heart and promising to marry her if a pardon was granted. Now, before the trial he had been something more than an admirer, and the authorities thinking that once she was released he might continue to postpone indefinitely the ceremony of marriage, entered upon the paternal manœuvre of concealing the granting of the pardon till the bridegroom, now rather reluctant, had been rushed through a wedding by special licence.

16 JUNE.—On the 16th June, 1808, John Hart and Henry White, the printer and proprietor of *The Independent Whig*, were tried in the King's Bench for certain libels on the administration of justice. A little while before two captains (one of them the master of a slave ship) had been acquitted of murders alleged to have been committed by them on board their ships in particularly cruel circumstances. The writer let himself go, declaring: "Had I been present when the acquittal of these masters was proclaimed, with all my respect for the tribunals of my country, I fear the impulse of nature would have prevailed over the timid suggestions of prudence. I should have disturbed stern justice slumbering on her mercy seat, and transgressed the rigid boundaries of decorum." For this and much more like it the accused were imprisoned in Newgate.

17 JUNE.—On the 17th June, 1567, at a Council of the Benchers of Lincoln's Inn "as well the Principal of Furnival's Inn as the others of that house that lately were in variance were reprehended for certain enormities."

18 JUNE.—Next day, the 18th June, the matter was again considered, and it was ordered: "That some misgovernment of the Principal shall be disallowed. That the doings of the Ancients touching the removing of him shall be disallowed. That he be admonished not to be revenged."

THE WEEK'S PERSONALITY.

William Palmer was actually hanged for the murder of his friend, John Parsons Cook, but the prosecution had other strings to their bow in the shape of indictments for the murder of his wife and his brother. There was a strong suspicion that he had poisoned several other people, and his case excited interest throughout Europe. The son of a Staffordshire timber merchant, he had adopted a medical career, supplementing a limited practice at Rugeley by speculations on the turf. His wife and brother had died heavily insured by him, and just before Cook's death he had defrauded him of all he had. During the interval between his trial and his execution, which attracted thousands of eager spectators, he tenaciously clung to a hope of reprieve, repeatedly protesting his innocence. Though he performed all his religious exercises with devotion he steadfastly resisted the chaplain's exhortations to admit the justice of his sentence. He slept soundly throughout the last night and walked from the cell with a light step, but very pale, declaring that he went to the scaffold a murdered man. Phrenology was the current fad of the time, and a practitioner who examined a cast of his head found "amativeness" and "combativeness" very large. "Secretiveness," "alimentativeness" "destructiveness," "inquisitiveness" and "constructiveness" were very prominent.

PRESSING APPOINTMENT.

Often a joke has a longer and more complicated ancestry than you might think. I myself have traced one back with little variation to the time of the ancient Romans. Thus in a recent number of a comic paper there was a drawing of an infuriated lady in bridal dress standing in an office ante-room while the switch-board girl calls through: "There's a lady to see you, Mr. Larkin. Says you had a ten o'clock appointment with her." Now, more than a hundred years ago, the Inns of Court used to rock with laughter at the story of Mr. Serjeant Hill's wedding day. In the morning he went to his chambers as usual but, becoming immersed in a brief, forgot all about his engagement. Time passed and at last a messenger was sent in search of him and brought him safely to the church. After the ceremony he found means to get back to his library to look up another case, and it was dinner time before his clerk could get him packed off home to his expectant bride. I believe it was Chief Baron Palles whose last thought as he left for his honeymoon was to take Fern on "Contingent Remainders" with him.

A BOLD PEER.

An extract from the *Morning Post* of a hundred and fifty years ago tells how after a conflict between Lord Stanhope and several bishops on a Bill brought in by him, another Bill was postponed to a future date, the noble lord declaring "that he would on that day teach the Lord Chancellor of England law as he had on the present taught the Bench of Bishops gospel." One can only gasp at his boldness thus to beard Lord Thurlow on the Woolsack:

"That rugged Thurlow who with sullen scowl
In surly mood at friend and foe will growl."

Hardly had he received his peerage when he cowed the whole House of Lords by trampling on the Duke of Grafton who had sneered at his plebeian origin. "The noble Duke," he said, "cannot look before him, behind him or on either side of him without seeing some noble Peer who owes his seat in this House to successful exertions in the profession to which I belong. Does he not feel it is as honourable to owe it to these as to being the accident of an accident?" His verbal ferocity caused him to be known as "The Tiger." Once the Bishop of Peterborough fell foul of him by speaking of "fruitless desolation" which, said the Chancellor, is "an expression which carries no meaning and is neither sense nor grammar. It is not supported by any figure of speech or by any logic or even by any vulgarism that I ever heard. 'Fruitless desolation,' my lords, is rank nonsense. I was not aware before that desolation might be fruitful."

Notes of Cases.

Court of Appeal.

Court Line, Ltd. *v.* Canadian Transport Co., Ltd.

Scott, Clauson and Goddard, L.JJ. 3rd May, 1939.

SHIPPING—CHARTERPARTY—CHARTERERS TO LOAD CARGO UNDER CAPTAIN'S SUPERVISION—OWNERS TO GIVE CHARTERERS BENEFIT OF THEIR INDEMNITY CLUB INSURANCES "AS FAR AS CLUB RULES ALLOW"—NEGLIGENT STOWING—DAMAGES TO BILL OF LADING—HOLDERS PAID BY INDEMNITY CLUB—CLAIM IN NAME OF OWNERS AGAINST CHARTERERS—LIABILITY—WHETHER RIGHT TO INDEMNITY.

Appeal from Lewis, J.

A time charterparty, dated the 28th January, 1937, containing the ordinary provisions, included the following clause: "The captain (although appointed by the owners) shall be under the orders and direction of the charterers as regards employment and agency; and charterers are to load, stow and trim the cargo at their expense under the supervision of the captain who is to sign bills of lading for cargo as presented . . ." It was also provided: "Owners to give time charterers the benefit of their protection and indemnity club insurances as far as club rules allow, and in case of shortage or damage to cargo, charterers to bear the franchise according to the club rules, which owners would have otherwise borne." By r. 2 of the rules of the protection and indemnity association of which the owners were members, they were "protected and indemnified as shipowners in respect of losses or claims arising without their actual fault or privity which they shall have become liable to pay and shall have in fact paid." It was provided that in the case of claims other than "protection" claims members should be indemnified for claims "arising in respect of the shipment, carriage, discharge or delivery of goods or merchandise arising through other causes than 'improper navigation,' the intention being to mutually protect and indemnify the members against the negligence or default of their servants or agents." By r. 2 (i) it was provided: "The association shall be entitled . . . to recover for its own account from third parties any damages that may be provable by reason of such neglect." By r. 17: "No assignment or subrogation by a member of his cover with this association to charterers or any other person shall be deemed to bind this association to any extent whatsoever." Owing to negligent stowing a cargo was damaged to the extent of £100. When the owners received the claim from the bill of lading holders, they communicated with the club which, to save inconvenience, paid direct, expecting to have the benefit of the owners' rights under the charterparty against the charterers for indemnity against the liability put on them by reason of the negligent stowage. On a consequent claim made in the name of the owners against the charterers, the defendants contended (1) that they were entitled to the benefit of the plaintiff's club insurance, and (2), that as the stowing was under the captain's supervision, they were not liable for improper stowage. Lewis, J., affirmed an arbitration award in favour of the defendants.

SCOTT, L.J., allowing the owner's appeal, said as to r. 2 (i) that if in an ordinary time charter an owner incurred liability to bill of lading holders by reason of the charterer calling on the captain to sign bills of lading which put a liability on the ship brought about by the charterer in breach of his duty

to the owners, then *quoad* the owners' insurers the charterer was a third party liable to the owners for damages provable by reason of his neglect within the meaning of r. 2 (i). The meaning was that there was a stipulation by the club that its right of enforcing the owners' claim for indemnity against the time charterer in such circumstances should be preserved for its benefit when, after the owners had been paid by the club, it desired to enforce its right of subrogation to stand in the shoes of the assured and gather in those rights of recourse against third parties which an insurer was entitled to put in his own pocket by way of reduction of his liability under his insurance obligations. As to r. 17, one of its objects was to prevent the club losing its right of subrogation after payment to the assured. The two rules together provided: (1) that a shipowner who was a member was not entitled to give away to third parties, such as charterers, his rights to recover from the club and, (2), that the club should in all events remain entitled by way of subrogation to enforce the member's right of recourse against third parties, including charterers. As to the clause giving the charterers the benefit of the owners' indemnity club insurances, *ex hypothesi* the owners were required to preserve to the club their right of recourse against the time charterers for an indemnity and to the extent of that right the owners were precluded by the club rules from giving the charterers the benefit of their insurance. Thus, the charterers could not claim the benefit of the insurance if a claim would take from the club its own right to recover from third parties the damages payable to the bill of lading holders by reason of bad stowage. The clause could be interpreted that the owners would give the charterers the benefit of their club insurances in case of shortage or damage to cargo if the rules of the club allowed that to be done, but if the rules did not allow it then the undertaking was to have no application. His lordship further held that under the charterparty the obligation of stowing was not left wholly with the ship, and that the argument that the charterers had no obligation with regard to it was erroneous (*Brys and Gylsen, Ltd.* v. *J. & J. Drysdale & Co.*, 4 Ll. L. Rep at p. 25; *Harris & Co.* v. *Best-Ryley & Co.*, 68 L.T. 76).

CLAUSON, L.J., agreed.

GODDARD, L.J., agreed as to the liability for improper stowage but dissented on the other point.

COUNSEL: *Mocatta; Sir Robert Aske*, K.C.; *Cyril Miller* and *R. L. Hurst*.

SOLICITORS: *Holman, Fenwick & Willan; Middleton, Lewis & Clarke*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Swain *v.* Southern Railway Company.

Greene, M.R., Finlay and du Parcq, L.JJ.
28th April, 1st, 2nd, 3rd and 18th May, 1939.

RAILWAY—BRIDGE OVER LINE—COMPANY LIABLE TO MAINTAIN ROAD OVER BRIDGE—NON-REPAIR OF ROAD—CYCLIST INJURED—COMPANY'S LIABILITY FOR NON-FEASANCE—ACTION BROUGHT MORE THAN SIX MONTHS AFTER ACCIDENT—WHETHER COMPANY PROTECTED—EXTENT OF DUTY TO MAINTAIN.

Appeal from Humphreys, J. (82 SOL. J. 713).

The plaintiff was bicycling to work by a road carried over a railway line by a bridge. After passing over the bridge he was descending the sloping approach road when his wheel caught in a rut and he was thrown down and injured. Humphreys, J., found as a fact that his injuries were solely caused by the failure of those on whom lay the duty of repairing the approach road to maintain it in a reasonable condition for the use of ordinary traffic. The road was a public highway and the parties agreed that the rut was in a part of it which was repairable by the railway company by virtue of the Railway Clauses (Consolidation) Act, 1845, s. 46, which had been incorporated in a private Act of 1856, dealing with the material part of the company's undertaking. Humphreys, J., held that the company were liable under s. 46 for non-feasance, that they were not entitled to the protection of the Public Authorities Protection Act, 1893, and that they were liable to maintain the bridge and approaches in the state in which they were constructed about 1856, and had failed to do so, the state of the road being dangerous not only for bicycles but also for gigs and dog-carts, vehicles which were common in 1856, and had not entirely died out. He also held that the plaintiff was not guilty of contributory negligence.

FINLAY, L.J., dismissing the company's appeal, said that the Public Authorities Protection Act could not avail the defendants (*Attorney-General* v. *Company of Proprietors of Margate Pier and Harbour* [1900] 1 Ch. 749; *Parker* v. *London County Council* [1904] 2 K.B. 501; *Bradford Corporation* v. *Myers* [1916] 1 A.C. 242; *Lanarkshire Upper Ward District Committee* v. *Airdrie, Coatbridge and District Water Trustees*, 8 F. 777). A commercial company did not become a public authority because Parliament had thought fit to impose on them duties in maintaining bridges and their approaches. As to liability for non-feasance, an action in respect of failure to repair a road did not lie against the inhabitants of a county (*Russell* v. *Men of Devon*, 2 Term. Rep. 667). That principle had been held applicable to various public authorities to whom in the course of time the duties of the inhabitants had been transferred. The principle that a road surveyor or local board or public corporation responsible for the repair of roads was not liable in respect of non-feasance to a person injured did not apply here. For it to apply it must be shown that the defendants were really the successors of the inhabitants and had really had transferred to them the duties and liabilities which originally rested on the inhabitants. This company could not show that. They came under the liability to make and repair bridges and their approaches as one of the terms imposed by s. 46 of the 1845 Act. The principle originally applicable to inhabitants did not apply here (*Dublin United Tramways Co.* v. *Fitzgerald* [1903] A.C. 99; *Parkinson* v. *Garstang and Knott End Railway Co.* [1910] 1 K.B. 615).

COUNSEL: *Trapnell*, K.C., and *Denning*, K.C.; *J. L. Pratt*.

SOLICITORS: *H. L. Smedley; Hancock & Willis*, for *Cecil Forward*, of Axminster.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Hill *v.* Wolverhampton Corrugated Iron Co., Ltd.

MacKinnon and Luxmoore, L.JJ., and Macnaghten, J.
26th April and 15th May, 1939.

WORKMEN'S COMPENSATION—AWARD—REVIEW—CHANGE IN RATES OF REMUNERATION—EFFECT—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 11 (3).

Appeal from Birkenhead County Court.

In March, 1934, a crane driver employed for many years by the company at an average weekly wage of £2 7s. 7d. was permanently incapacitated from following that occupation by an accident. From that date to the 16th November, 1935, he was paid compensation at the rate of £1 4s. 5d. a week. Thereafter till the 25th October, 1937, the company employed him on light work at £2 a week, and paid him 4s. a week compensation. After that, they employed him on light work at £2 8s. a week (more than his earnings before the accident) and ceased to pay him compensation. By increases in June and August, 1937, the wages of crane drivers had been raised by 50 per cent. The workman sought a review of the weekly payments, claiming corresponding increases. The employers proved the work actually done and the wages actually earned by a crane driver (operating the crane previously worked by the workman) from September, 1937, to September, 1938. Though the higher rate of wages was in force his average weekly earnings were £2 12s. 8d., since

less work was done by him in the period than had been done by the workman in the pre-accident period. His Honour Judge Whitmore Richards refused to review the award.

MACKINNON, L.J., said that he agreed with the judgments about to be delivered.

LUXMOORE, L.J., allowing the workman's appeal, said that the question turned on the Workmen's Compensation Act, 1925, s. 11 (3). The workman contended that for the purposes of review under s. 11 (3) the actual periods during which he worked in the twelve months preceding the accident should be taken into consideration, the wages earned being adjusted by substituting for the actual amounts earned sums ascertained on the basis of the 50 per cent. increase. The employers contended that the question whether there had been an increase in the average weekly earnings sufficient to justify a review could only be ascertained by contrasting his average weekly earnings during the twelve months preceding the accident with what his average weekly earnings during the twelve months preceding the review would have been, having regard to the amount of work available during that period for a crane driver doing the same class of work. His lordship observed that in the case of total and partial incapacity the calculation of the compensation was based on the man's "average weekly earnings" during the twelve months immediately preceding the accident if he was so long employed, but, if not, then for any less period during which he was in the employment. Rules for the computation of "earnings" and "average weekly earnings" were laid down by s. 10. By whatever method the average weekly earnings were to be ascertained, the two decisive factors were the wages earned and the number of weeks worked, omitting weeks when no work was done owing to absence due to illness or other unavoidable cause. In s. 11 (3) the phrase "rates of remuneration" was not equivalent to "average weekly earnings." There must be excluded from consideration any alteration in the average weekly earnings resulting from a difference in the time factor which would otherwise be applied in ascertaining the average weekly earnings during the two periods to be contrasted. The employers must pay the costs here and below.

MACNAGHTEN, J., agreed.

COUNSEL: *J. Pugh* and *Marnham*; *R. Norris* and *R. Everett*.

SOLICITORS: *Pattinson & Brewer*; *Berrymans*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Compton *v.* West Ham Borough Council.

Crossman, J. 12th May, 1939.

LIMITATION OF ACTIONS—RELIEVING OFFICER—ILLNESS—ABSENCE—HALF-PAY TILL RETURN—ACTION FOR FULL SALARY—PUBLIC AUTHORITIES PROTECTION ACT, 1893 (56 & 57 Vict., c. 61), s. 1.

In October, 1934, the plaintiff was appointed a relieving officer by the defendant council. From December, 1935, to the 13th September, 1936, he was absent from work through illness. Till March, 1936, he was paid his full salary. During the rest of his illness, he received half-pay. On the 1st March, 1937, he commenced an action to recover his full salary during the period. The council contended that under a regulation in one of its minutes, dated January, 1913, the plaintiff was entitled to full pay during the first thirteen weeks of sickness only. They also relied on the Public Authorities Protection Act, 1893.

CROSSMAN, J., said that an employee was entitled to full wages while incapacitated by sickness unless there was a special term in the contract providing otherwise or an implied term to that effect or the employee was estopped by some act on his part from claiming full wages (*Marrison* v. *Bell*, 160 L.T. 276; 83 SOL. J. 176). On the evidence in this case, the plaintiff when appointed did not know of the regulation, and there was no ground for implying as a term of his contract the provisions as to sick pay adopted by the council in 1913. He was entitled to succeed subject to the point under the 1893 Act. The council contended that the keeping back of half his salary was "done in pursuance, or execution or intended execution of" an Act of Parliament and as the action had not been begun within six months the Act applied. The plaintiff said it did not apply because the action was for breach of contract (*Clarke* v. *Lewisham District Council*, 19 T.L.R. 62; *Sharpington* v. *Fulham Guardians* [1904] 2 Ch. 449). The statement in Halsbury's "Laws of England," 2nd ed., vol. 26, para. 612, was correct. Only a breach of contract which a public authority had the power but not the duty to make was not within the Act (*Bradford Corporation* v. *Myers* [1916] A.C. 242; *McManus* v. *Bowes* [1938] 1 K.B. 98). The appointment of the plaintiff was one which the council were bound to make (Poor Law Act, 1930, s. 132 (2); Public Assistance Order, 1930, art. 142 (1)), and s. 1 of the 1893 Act applied to an action brought to remedy a breach of a contract which the council were bound to make under the 1930 Act and the regulations thereunder. It followed that with regard to moneys which became due before the 1st September, 1936, the action did not lie. It lay only as regarded moneys due after that date. On the facts the salary was payable monthly. The plaintiff was entitled to the costs because substantially he had succeeded.

COUNSEL: *J. Foster*; *Diplock*.

SOLICITORS: *Stutfield & Son*; *E. E. King*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

State of Spain *v.* Chancery Lane Safe Deposit and Offices Co., Ltd., de Reding and Others; *in re* Application of de Reding *v.* Dawson.

Simonds, J. 13th June, 1939.

CONTEMPT OF COURT—PUBLICATIONS PENDING SUIT—ACTION BY FOREIGN STATE—SPEECH BY HEAD OF STATE—REPORT IN ENGLISH NEWSPAPER—MOTION TO COMMIT EDITOR.

In this action the State of Spain claimed bonds and securities to the value of £2,000,000 which one de Reding had deposited in the Chancery Lane Safe Deposit. After a prolonged civil war the Nationalist authorities had been recognised as the Government of Spain on the 26th February, 1939. The property in question had been delivered to de Reding by one Aspe, Finance Minister of the Spanish Republican Government. A contract under which the property was to be delivered to de Reding for the purpose of creating a charitable trust for the benefit of emigrants from Spain was alleged to have been signed by Aspe at Figueras in Spain, a short distance from the French border, on the 5th February, 1939, when the Republican armies were in full retreat and a few days before the Nationalist armies gained complete control of all Spanish territory bordering on France. The contract was signed in Paris by de Reding on the 18th February, 1939. He executed the declaration of trust on the 27th February, 1939. The plaintiffs claimed that the transfer was not the act of any Government of Spain. While the action was pending *The Times* newspaper published a report of a speech by General Franco, now the head of the State of Spain, declaring that in Great Britain "a great part of the wealth of our banks remains sequestered and subject to litigation owing to the monstrous survival of a supposed humanitarian society formed by the Reds after their cowardly flight." De Reding by this motion asked that the editor might be committed to prison for contempt of court. Alternatively, he asked that he might be at liberty to issue a writ of attachment against the editor. In his affidavit he suggested that the report would prejudice the fair trial of the action by creating bias in the minds of witnesses, that it would make it hard for him to establish that he had a good title, that he was well known in financial circles in Switzerland

and abroad, and that such a report exposed him to public dislike. It was argued by counsel that de Reding had taken considerable risks as to costs and such statements might cause him to hesitate to continue the defence of the trust. It was also said that such statements might affect Spanish witnesses who had to return to Spain if they knew that this view was taken by the authorities there.

SIMONDS, J., referred to *Gaskell & Chambers, Ltd.* v. *Hudson, Dodsworth & Co.* [1936] 1 K.B., at p. 603, and said that this case would not come before a jury and the report was not likely to influence the mind of the court. In such a matter it was a question of degree. The publication in *The Times* was not likely to deter witnesses from giving evidence. The defendant, who must be well aware of the view taken by the Spanish Government, was not likely to be deterred from defending the action in any way he thought fit. There was no justification for this application, which must be dismissed, with costs.

COUNSEL: *Sir Stafford Cripps*, K.C., and *E. Stamp*; *V. Holmes*.

SOLICITORS: *Denton, Hall & Burgin*; *Culross & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Perry *v.* London Passenger Transport Board.

Atkinson, J. 31st March, 1939.

LOCAL GOVERNMENT—TRANSFER OF UNDERTAKING TO COMPANY—DISMISSAL OF SERVANT THROUGH LACK OF WORK—"EXISTING SERVANT"—RIGHT TO COMPENSATION—EARNINGS AFTER DISMISSAL—WHETHER TO BE TAKEN INTO ACCOUNT—LONDON PASSENGER TRANSPORT ACT, 1933 (23 & 24 Geo. 5, c. 14), s. 73, Sched. 14, para. 4.

Case stated by an arbitrator.

The claimant Perry was, except for a break of five months, employed by the London County Council as a blacksmith in connection with their tramways, prior to 12th March, 1931 until the 1st July, 1933, the "appointed day" under the London Passenger Transport Act, 1933, when he passed into the employment of the respondent board. On the 6th January, 1937, he was dismissed only because, as the result of a change from tramcars to trolley-buses, there was no work for him. Immediately after his discharge, the claimant, who had been earning £4 a week, obtained employment at Woolwich Arsenal, at an average weekly wage of £9. From March, 1938, he worked in the same employment as a blacksmith at £3 12s. a week. He claimed compensation in respect of his dismissal by the London Passenger Transport Board and the arbitrator awarded him £100 subject to the opinion of the court. By s. 73 (1) of the Act of 1933: "... this section shall apply ... to any person who (*a*) was on the 12th March, 1931, an officer ... of a [transferring authority] ... and (*b*) either (i) was on the said date occupied in ... the undertaking ... transferred by this Act ... or (ii) between the said date and the appointed day became so occupied on being transferred by his employers from other duties ... and (*c*) was immediately before the appointed day an officer of that authority ..."

ATKINSON, J., said that the claimant clearly fulfilled the three conditions laid down by s. 73. He was employed on the 12th March, 1931, by a transferring authority in an undertaking to be transferred. The respondents, nevertheless, contended that he did not become an existing servant because Parliament intended that he should have been, which was not the case, employed by the transferring authority for the whole of the period from the 12th March, 1931, until the appointed day. The Act, however, did not so provide. It contemplated that anyone who was put on to, say, tramway work a fortnight, even, before the appointed day would become an existing servant if he had been employed by the transferring authority on the 12th March, 1931. It was unlikely, then, that the claimant, who had been employed for the whole period except for some five months, would be outside the definition of an existing servant. It was next argued for the respondents that, by s. 73 (7), there was only a presumption that the claimant had suffered pecuniary loss, which presumption was rebuttable, and here rebutted because he was only employed subject to a week's notice. He (his lordship) did not think that fact sufficient to take the claimant out of the definition of an existing servant, or out of the Act. Finally, the arbitrator had decided, against the claimant, that he was entitled to take into account his subsequent earnings, and accordingly awarded him £100 as against the £300 which he would have awarded had he not taken them into consideration. By para. 4 (*f*) of Sched. 14 to the Act, regard was to be had to "all the other circumstances of his case" in assessing the claimant's compensation. It was argued for the claimant that that sentence must be limited by the reference in para. (*e*) to emoluments which he might have received by accepting other employment offered by the transferring authority or the board. He (his lordship) did not agree. It would be unfair not to take into consideration what the claimant had earned since his dismissal. The award of £100 must be upheld.

COUNSEL: *N. L. C. Macaskie*, K.C., and *M. R. Nicholas*; *Craig Henderson*, K.C. and *N. R. Fox-Andrews*.

SOLICITORS: *W. H. Thompson*; *Bircham & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Chant *v.* Read.

Hallett, J. 3rd April, 1939.

TORT—JOINT TORTFEASORS—MOTOR COLLISION—HUSBAND AND WIFE IN ONE CAR—WIFE KILLED—WIFE'S CLAIM AGAINST OTHER DRIVER FOR LOSS OF EXPECTATION OF LIFE—WHETHER OTHER DRIVER ENTITLED TO CONTRIBUTION FROM HUSBAND—MARRIED WOMEN'S PROPERTY ACT, 1882 (45 & 46 Vict., c. 75), s. 12.

Special case set down under R.S.C., Ord. 25, r. 2, for disposal of a preliminary point of law.

In June, 1938, a collision occurred between a motor car driven by one Read and a motor bicycle driven by one Chant. As a result of the accident Read's wife, a passenger in the car, was killed. Read began an action against Chant, and, also, as administrator of his wife's estate, claimed damages under the Law Reform (Miscellaneous Provisions) Act, 1934. Chant also brought an action against Read, and pleaded that, if he should be held liable to pay damages to the estate of Mrs. Read, he was entitled to claim contribution from Read on the ground that the latter was a joint tortfeasor. Read, by his defence, admitted certain allegations of fact, but denied that he was liable as a joint tortfeasor, and submitted that no cause of action was disclosed. That contention now came before the court as a preliminary point of law.

HALLETT, J., said that the matter might turn out to be one of general importance. It was not disputed that, if Read were unsuccessful in the action by Chant, he would be a tortfeasor within s. 6 (1) (*c*) of the Law Reform (Married Women and Tortfeasors) Act, 1935. Nor was it disputed that, in order that Chant should be entitled to contribution, it must be shown that there was a cause of action vested in Mrs. Read, which, by virtue of the provision in the section, survived for the benefit of her estate. If that were the case, then only under the Act of 1935 might Chant succeed in his action. Thirdly, it was argued for Read that at the moment of Mrs. Read's death there was not vested in her any cause of action against her husband in respect of her normal expectancy of life, and counsel relied on s. 12 of the Married Women's Property Act, 1882, which now, so far as material, provided: "Every woman ... shall have ... against ... her husband the same civil remedies ... for the protection and security of her own property as if she were a *feme sole* ..."

It was necessary for Chant to show that Mrs. Read's cause of action constituted a "civil remedy for the security and protection of her property as if she were a *feme sole*." By s. 24 of the Act of 1882 "property" included a thing in action. The question was whether Mrs. Read had at the time of her death a civil remedy for the protection and security of her own property in the shape of a right of action for damages by reason of the shortening of her normal expectancy of life. It was contended for Chant that the right to enjoy life for the full normal period was a thing of value, and that as a thing of value could rightly be described as property, the right to claim damages for loss of expectation of life was a civil remedy for the protection or security of that piece of property. In his (his lordship's) opinion, on the true construction of s. 12 a married woman, who was killed in a motor car collision by reason of the negligence of her husband while driving the car in which she was a passenger, had not vested in her at the date of her death a cause of action against her husband for damages for the loss of her normal expectancy of life. Therefore Read could not be a tortfeasor who was or, if sued, might have been liable in respect of the same damage as that for which Chant might be liable to Mrs. Read's administrator, and therefore Chant's claim for contribution must fail.

COUNSEL: *J. A. Petrie; F. Denny.*

SOLICITORS: *Wm. Easton and Sons; F. J. Stewart.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Hallett; *ex parte* Smith.

Lord Hewart, C.J., Humphreys and Singleton, JJ.
19th April, 1939.

PROCEDURE — QUARTER SESSIONS — APPEAL ALLOWED — RECORDER AGREEING TO STATE CASE—DEATH BEFORE CASE STATED—WHETHER HIGH COURT ENTITLED TO ORDER NEW RECORDER TO HEAR AND DETERMINE APPEAL.

Rule *nisi* for mandamus.

One Peacock, having been adjudged the putative father of a bastard child delivered to one Jean Smith, appealed to Quarter Sessions. The Recorder allowed the appeal, but agreed to state a case for the opinion of the High Court. The Recorder died before the case was settled. The mother then obtained a rule *nisi* for a writ of mandamus, calling on the new Recorder (now Hallett, J.) to enter continuances and hear and determine the merits of the appeal.

LORD HEWART, C.J., said that it would be very regrettable if, in circumstances such as had arisen, there were no power in the Divisional Court to issue the writ applied for. Were that the case, a party might, by the mere accident of sudden death, be deprived of whatever benefits might be obtained from a decision of the Divisional Court. It was argued strongly that the decision given by Quarter Sessions arising out of an application for an order of bastardy must be final, and that the late Recorder's words agreeing to state a case might be ignored. The authorities left no doubt that the proper course was that which had been taken in at least two earlier cases. The passages in "Archbold's Quarter Sessions" (6th ed., at pp. 442 and 444) were merely confirmatory. The course in question was taken in *Liverpool Corporation* v. *West Derby Union* (1905), 3 L.G.R. 647. It might be that, as was contended, what was done in that case was done by consent; but consent would not give the court a jurisdiction which did not already exist. Extremely valuable in this connection was *R.* v. *Suffolk Justices*, 1 Dowling's Practice Reports, 163. The provisional judgment which the late Recorder had delivered in the present case bore all the marks of a judgment such as that described in *R.* v. *Suffolk Trustees*, *supra*, as having only been decided subject to a case for the opinion of the court. In that case the justices were unable to agree for several sessions on the terms of the case to be stated, and it was held that a writ of mandamus to enter continuances and hear the appeal must issue unless a case were settled in the meantime, for the justices could not be commanded to settle a case. His lordship referred to "Short and Mellor's Practice of the Crown Office" (2nd ed., at p. 433), and said that it might well be that in a case of this nature hardship might arise, and that such an interval as necessarily occurred in consequence of death might afford opportunities of undesirable afterthought. But all those minor matters were of no importance by comparison with the profoundly important matter that the court, in a proper case, should see that an appeal was effectively heard and determined. What particular point was reached in the process of hearing and determining was a mere detail. The point was that the process had not been completed; that the hearing and the determination were still inchoate, and that all that was done was subject to the opinion of the court. What had been done was of no more force and effect than it would have been if the Recorder had died, for example, at the end of the hearing of the evidence of one party. The essential thing was that there should be a proper hearing and determination. The authorities seemed to accord clearly with what must be regarded as natural justice and highly desirable from the public point of view. The rule must be made absolute.

HUMPHREYS and SINGLETON, JJ., agreed.

COUNSEL: *W. A. Macfarlane*, showing cause; *Quintin Hogg*, in support.

SOLICITORS: *Gibson and Weldon*, for *T. Magnay*, Newcastle-on-Tyne; *Hewitt, Woollacott and Chown*, for *S. G. Wilson*, Newcastle-on-Tyne.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Worcestershire Justices; *ex parte* Lower Avon Navigation Co., Ltd.

Lord Hewart, C.J., Humphreys and Singleton, JJ.
20th April, 1939.

INTERPRETATION OF STATUTES—NAVIGABLE RIVER—JUSTICES EMPOWERED TO APPOINT CONSTABLE TO PATROL BANKS ON APPLICATION OF OWNERS—POWER COUPLED WITH DUTY—JUSTICES' REFUSAL—VALIDITY—CANALS (OFFENCES) ACT, 1840 (3 & 4 Vict. c. 50), s. 1.

Order *nisi* for mandamus.

The applicant company were the owners of the Lower Avon, a navigable river. Alleging that their property had suffered considerable damage and that the Worcestershire Constabulary were unable to afford it sufficient protection, they applied to the justices under s. 1 of the Canals (Offences) Act, 1840, for the appointment of one James to act as constable along the banks of the river. The justices having refused the application because they considered it unnecessary, this order was obtained calling on them to show cause why a writ of mandamus should not issue to them to make the desired appointment. By s. 1 of the Act of 1840, "It shall be lawful for any two justices of the peace . . . on the application of . . . the company of proprietors of any navigable river . . . to appoint so many persons as they shall think fit from among those who shall be recommended by such company . . . to act as constables on and along such canal or river . . ."

LORD HEWART, C.J., said that the case fell clearly within the principle laid down in *Julius* v. *Bishop of Oxford*, 5 App. Cas. 214, at p. 222, and discussed by the Divisional Court in *De Keyser* v. *British Railway Traffic & Electric Co.* [1936] 1 K.B. 224, at p. 229. In the former case Lord Cairns said that the words "it shall be lawful" were plain and unambiguous, and merely made that legal and possible which there would otherwise be no right or authority to do. They did not of themselves do more than confer a faculty or power, but there might be something in the nature of the thing empowered to be done, or in the object for which it was to be done, or in the conditions under which it was to be done, or in the title of the person or persons for whose benefit the power was to be exercised, which might couple the power with a duty and make it the duty of the person in whom the

power was reposed to exercise that power when called upon to do so. Applying that principle to the facts in the present case, s. 1 of the Act of 1840 manifestly gave to justices the faculty or power to appoint as constables persons falling within a certain class of recommended persons. It was apparent, on looking at the nature of the subject-matter of the statute, and especially at the provisions with regard to the powers of constables, that a power was conferred for the benefit of bodies whose property it was desired to make secure. The faculty or power was therefore coupled with a duty, and the power to be exercised went side by side with the duty which was to be performed. In those circumstances the words of Lord Cairns literally applied. The circumstances of the case were such as to call on the justices to exercise their powers, and the order must be made absolute.

COUNSEL: *W. E. B. Behrens*, showing cause for the justices; *P. E. Sandlands*, K.C., and *R. T. Paget*, in support.

SOLICITORS: *Pennington & Son*, for *G. R. Addis*, Pershore; *Denton, Hall & Burgin*, for *Pomeroy & Hunt*, Sidmouth.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Dacey.

Lord Hewart, C.J., Humphreys and Singleton, JJ.
24th April, 1939.

CRIMINAL LAW—EXPLOSIVES—POSSESSION OF—ONUS ON ACCUSED TO PROVE LAWFUL OBJECT—WHETHER PROSECUTION OBLIGED TO PROVE KNOWLEDGE OF EXPLOSIVE NATURE OF SUBSTANCE—EXPLOSIVE SUBSTANCES ACT, 1883 (46 Vict., *c.* 3), ss. 4, 9.

Application for leave to appeal against conviction and sentence.

The applicant was convicted on an indictment containing two counts: "(1) that he . . . knowingly had in his possession certain explosives . . . in such circumstances as to give rise to a reasonable suspicion that he did not have them in his possession for a lawful object, and (2) that he knowingly had the same explosives under his control in similar circumstances, contrary to s. 4 of the Explosive Substances Act, 1883." He was sentenced by Hilbery, J., to seven years' penal servitude. When the applicant's premises were searched by the police, he produced parcels which were found to contain, among other things, a saucepan, a wooden spoon, paraffin wax and a quantity of potassium chlorate. Other explosives were found in a Gladstone bag, and on a subsequent search some detonators were found hidden under the rafters of the cellar ceiling. When asked to account for these things, the applicant said that some man had brought them to his shop about a week before and had left them there.

HUMPHREYS, J., delivering the judgment of the court, said that the applicant complained that in his summing up Hilbery, J., omitted to explain the meaning of the word "knowingly" in the Act of 1883. There was no reason for granting the application, but it was desirable to state the law on this subject. The law was that in a prosecution under s. 4 of the Act of 1883, the prosecution had to prove that the accused person was knowingly in possession of something which was an explosive substance as defined in s. 9 of the Act, and further that the possession was in circumstances giving rise to a reasonable suspicion that it was not for a lawful object. When so much was proved, the onus was on the accused to prove, if he could, that he had possession for a lawful object. It was not necessary for the prosecution to prove knowledge by the accused of the explosive nature of the substance. No doubt evidence that the accused person did or did not know or suspect the use to which the substance might be or was intended to be put would be material on the question of the reasonableness or otherwise of the suspicion that possession by the accused was not for a lawful object; but that was very different from saying that the prosecution must fail unless it could prove some degree of chemical knowledge on the part of the accused. The gist of the offence under s. 4 was the wilful, intentional possession by an unauthorised person of what was in fact an explosive substance, in circumstances which would enable a jury to say that he had that explosive substance in his possession for an unlawful object. The application must be refused.

There was no appearance of counsel for either side.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Lynch *v.* Lynch.

Henn Collins, J. 27th April, 1939.

DIVORCE—DESERTION—PREVIOUS PETITION FOR NULLITY—SUIT BELIEVED DISMISSED—PETITION CONTINUING ON THE FILE—RESUMPTION OF COHABITATION—NOTIONAL TEST OF ESTOPPEL BY CONDUCT—DECREE *nisi*.

This was a wife's undefended petition for divorce on the ground of desertion.

HENN COLLINS, J.: In this case the husband and wife were married on 14th August, 1915. They were both members of the theatrical profession, and they lived together as and when the exigencies of their profession permitted down to 24th June, 1924, when the wife presented a petition for nullity of the marriage. That petition was served on the husband and went forward in the ordinary way until July, 1924, or thereabouts, when the wife, on advice which she had received, instructed the solicitor who was then acting for her to get the petition dismissed. Immediately thereafter the spouses did not come together again. The exigencies of their calling required them to be in different places—abroad and in England, but in August, 1928, they were offered a professional engagement in which they might both appear together. They embraced that opportunity, and during that time they lived together as man and wife in the sense in which they had originally done so. That continued for a period of three months. During that time the wife was shown by her husband a letter which he had received from his solicitors—the solicitors acting for him in the nullity suit—which made it clear that he, the husband, and the respondent in this case, had been notified that the petitioner, his wife, was not going on with the nullity suit. After three months together, the husband lost his post in the theatrical company and obtained work elsewhere, while the wife continued in the company. They did not thereafter meet until July, 1930. By that time, or rather for a week in July, 1930, the wife was not working. The husband was at Birkenhead and, as she was out of work, she turned to him for support. She went to Birkenhead and they again lived together peacefully for that week. She then resumed her profession as he resumed his, and they worked apart by reason of the exigencies of their profession. If the matter rested there, merely upon the question of fact whether there was desertion, I should be inclined to say that there had been none. In 1933, however, the petitioner ceased to be upon the stage, and was therefore left to her own resources. She does not appear at any time to have kept in close touch with her husband, or he with her, but in September, 1933, having heard that he proposed to start a theatrical agency, she went to Birmingham and saw him there. She there asked him to set up a home with her, to which his reply was that he would go on as they were for a bit, and would see about it. He never did, in fact, see about it, and he never communicated with her again. In 1934—that is to say, some time in the following year—his wife wrote to him and said she was unhappy—she was living with her parents—and wanted to see him, to which his reply was again, from Birmingham, that he was trying to fix up work in Birmingham and could not get down to Hounslow to see her. It occurs to me that, if the suggestion of seeing his wife was one which commended itself to him, nothing would have been easier for him

than to send the money down to his wife for her to go to him, and I regard the statement that he was trying to fix up work in Birmingham and could not get down to see her as a mere specious excuse, coupled with the fact of his extremely cold reception of her original plea in 1933 that they should set up home together and his lapse into silence thereafter. I think that the proper inference on those facts is that he had an intention to desert his wife, and that that intention had effect in his complete failure to support her. In those circumstances I think that there was, in fact, desertion by him. That is always subject to the difficulty which is raised by the fact, which was unknown to both spouses, that the nullity suit, now some fourteen years old, had not, in fact, been dismissed. In spite of the wife's instructions to the solicitor who was then acting for her, it had remained on the file. *Primâ facie* the presence upon the file of a suit for nullity, or for a judicial separation, or for divorce, has the effect of an order upon the spouses to keep them apart, and, so long as that is so, it can be urged by either spouse charged with desertion that he or she, as the case may be, has obviously a lawful excuse for not rejoining the other spouse. Both spouses in this case believed that there was no such bar, that the suit had had a technical, as well as a practical, end. In those circumstances, what is the position in law? Desertion is fundamentally, apart from actual acts, a question of intention. The existence of that suit on the file cannot in the very least have affected the husband's conduct at any time, much less after September, 1933. Therefore, if it is to stand in the way of the wife on her present petition, it is a mere technicality, and one brought about by circumstances for which she is not in the least responsible. However, I must not let considerations of that kind weigh with me in considering the law applicable. None the less, one not unnaturally approaches it from the point of view that one assumes, if possible, that the law does not work hardship. It seems to me that the right way to regard this question is to treat the matter as though it were pleaded. That does not mean that the court can secure, as it were, any advantage from bad pleading, or assume anything not to be pleaded which ought to be pleaded, or anything to be pleaded which ought not to have been pleaded, but that, having ascertained the fact, it can then *ex post facto* draw the inference. I think that, if that hypothesis is applied in this case, the result will appear to be that the husband was not inclined to rely on the appearance on the file of the nullity suit. I think that the facts should be treated in some such way as this. The petitioner starts by saying: "You, my husband, deserted me in or about September, 1933, and that desertion has continued down to the date of the petition." To this the husband notionally answers: "But during the whole or some material part of that time, and in particular during the latter part, the last three years, I was precluded from rejoining you as your husband by reason of the existence on the file of the court—had I the curiosity to go and look there, which I had not—of a suit for nullity." To this the wife would plead in answer: "You, by your conduct, are estopped or precluded from doing any such thing, because you have over a period since that petition was upon the file (for two periods to be accurate) enjoyed my society and consortium as your spouse, and you cannot, in the language of the common law, blow 'hot and cold'." In that state of things, the issues raised by those pleadings, as it were, come before this court. What is the proper decision? My answer is that the wife's replication is well founded. The husband is not entitled to take advantage of a fact of which he was wholly ignorant. It did not affect his conduct in the least, and, even if he did know of it, he disregarded it for the purpose of enjoying the society of his wife.

His lordship pronounced a decree *nisi*.

COUNSEL: *C. L. Beddington*, for the petitioner.

SOLICITORS: *Rye & Eyre.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

Law Association.

This Association held its annual general court on the 7th June in the Royal Society's Council Chamber.

LORD BLANESBURGH, who presided, said in moving the adoption of the report that although many deaths of members had occurred during the year, substantial accessions to membership had also been recorded. The increase of membership over the figures for last year was twenty-nine and the total membership was 895, of whom 196 were life members. The Association has principally to mourn the loss of Mr. E. B. V. Christian, whom the Board had known so well and admired so much. He had been one of the President's earliest clients at the Bar, and his lordship had shared the sorrow of the Association at their loss. Mr. Christian had been a director for nearly twenty years and a member of the Association for over thirty years. Nevertheless, *uno avulso non deficit alter*, and his successor, Mr. F. M. Welsford, would no doubt worthily fill his place.

The reconstitution of the trusteeship was now complete, and the three new trustees had come into office with the old trustee, Mr. R. L. Hunter. The Association now had a body of four trustees, the like of which would not be excelled anywhere in London, and it would be the duty of members to give these gentlemen plenty of funds to administer, so that it could not be said that the Association used a sledge-hammer to crush a nut. One of the great features of the Association was that it assisted the dependants not only of its own members, but also of non-member solicitors. Of the sixty-one cases dealt with last year, forty-three had concerned non-members or their dependants, and more than a third of the total sum expended by the Association since it was founded had gone to the families of non-members. The Association adopted the attitude of Terence, "*Homo sum, et nihil humanum a me alienum puto.*"

The Association had also to thank Mr. E. E. Barron for his great work in preparing the second edition of the history of the Association. This had been a labour of love and thoroughly well done. During the Association's whole history it had always been able to attract to its membership the most distinguished and prominent members of the solicitors' profession in London, and Mr. Barron had rendered notable service in preparing and distributing this history.

Mr. ERNEST GODDARD, Chairman of the Board, said that a large expenditure had been due to the procedure of applying to the court for appointment of new trustees. This had involved the payment of court fees and counsel's fees. The Association always tried to provide a sufficient fund every year to send all the children of its beneficiaries on holiday who would otherwise not be able to go, and he appealed for special assistance for this fund from everyone present. He also asked for help for the Christmas fund, which was established to provide a small extra sum to give the children a treat. In moving that Lord Blanesburgh be elected President, Mr. Goddard said that his lordship had long been an institution in the Association, and the great interest he took in its fortunes was one of its most valuable assets.

Mr. JOHN VENNING, the treasurer, seconding the motion, declared that the Association and its directors derived great encouragement from their association with Lord Blanesburgh and his annual visits to its court. He mentioned that the membership of the Association was about 900, but that there were 6,000 solicitors practising in London, and he asked members to make an effort to recruit their friends.

Lord Blanesburgh was re-elected with acclamation, and a hearty vote of thanks was accorded to him for presiding.

The Vice-Presidents, Treasurers and Auditors were also reappointed, and the surviving directors were reappointed with the addition of Mr. Welsford.

Solicitors' Benevolent Association.

The Solicitors' Benevolent Association held a Conference on Wednesday, 14th June, at The Law Society's Hall, which was attended by delegates from the Association's Local Committees from all over the country. Sir William Gibson, President of The Law Society, attended, and amongst the delegates were the Presidents of the Provincial Law Societies in Bournemouth, Bridgend, Cambridgeshire, Liverpool, Preston, Wolverhampton and Worthing. The Association's work was discussed generally. Already this year nearly £18,000 has been distributed in grants to solicitors and their dependents and, owing to the efforts made by the directors and representatives in London and the Provinces, over 600 new members have been obtained since the 30th June last. Prior to the Conference, a luncheon was held, at which the delegates were the guests of the chairman and directors of the Association.

Gray's Inn Debating Society.

A meeting of the Society was held in the Common Room, Gray's Inn, on Tuesday, the 6th June. The Vice-President, Mr. E. Roger Wakefield, was in the chair. Mr. H. O. Thorpe proposed: "That the power of the press has increased, is increasing and ought to be diminished." Mr. F. P. Jaques opposed. Miss M. E. Audric spoke third, and Mr. Gilbert Harding (Hon. Secretary) spoke fourth. There also spoke: Mr. C. O. Cummins, Mr. James Wicks, Mr. J. G. Kekwick, Mr. Ralph V. Cusack (Hon. Treasurer), Mr. Patrick Back, Mr. Jonathan Davies and Captain F. J. Parker. On a division the motion was carried by the chairman's casting vote.

The Hardwicke Society.

A Joint Debate with the Union Society of London was held on Friday, 9th June, in the Middle Temple Common Room, the President, Mr. Lewis Sturge, in the chair. Mr. J. A. Grieves (Union Society) moved: "That the film industry is catering for decadent minds." Mr. M. N. Cochrane (Hardwicke Society) opposed. There also spoke Mr. T. K. Wigan, Mr. Woodrow Harding, Mr. G. Krikorian, Mr. Orme, Capt. Ellishaw, Mr. L. Travers, Mr. Henson, Mr. Riddiford, Mr. Weinstock, Mr. C. O. Cummins, Mr. Meredith, Mr. Llewellyn Thomas (Imm. Past Pres.) The Hon. Mover having replied, the House divided, and the motion was carried by one vote.

Parliamentary News.

Progress of Bills.

House of Lords.

Administration of Justice (Emergency Provisions) (Scotland) Bill.
Read Third Time. [13th June.

Adoption of Children (Regulation) Bill.
Read Third Time. [13th June.

Barmouth Urban District Council Bill.
Committed. [8th June.

Bootle Corporation Bill.
Read Third Time. [14th June.

Charitable Collections (Regulation) Bill.
Read Second Time. [13th June.

Charities (Fuel Allotments) Bill.
Read Third Time. [8th June.

Falmouth Docks Bill.
Read Second Time. [14th June.

Jarrow Corporation Bill.
Read First Time. [8th June.

London County Council (Money) Bill.
Read Second Time. [8th June.

London Gas Undertakings (Regulations) Bill.
Read Third Time. [13th June.

London Passenger Transport Board Bill.
Read First Time. [13th June.

Marriages Validity Bill.
Reported, without Amendment. [8th June.

Ministry of Health Provisional Order Confirmation (Bethseda) Bill.
Read Second Time. [8th June.

Ministry of Health Provisional Order Confirmation (Bradford) Bill.
Read Second Time. [8th June.

Ministry of Health Provisional Order (Corsham Water) Bill.
Read First Time. [14th June.

Ministry of Health Provisional Order (Newhaven and Seaford Water) Bill.
Read First Time. [12th June.

Ministry of Health Provisional Order (York Water) Bill.
Read First Time. [12th June.

National Trust for Places of Historic Interest or Natural Beauty Bill.
Reported, without Amendment. [13th June.

Public Trustee (General Deposit Fund) Bill.
Read First Time. [14th June.

St. Helens Corporation (Trolley Vehicles) Provisional Order Bill.
Read First Time. [12th June.

Sea Fisheries Provisional Order (Tollesbury and West Mersea) Bill.
Reported, without Amendment. [8th June.

Sheffield Corporation Bill.
Read Second Time. [8th June.

Southend-on-Sea Corporation (Trolley Vehicles) Provisional Order Bill.
Read First Time. [12th June.

Southern Railway Bill.
Read Second Time. [8th June.

South Shields Corporation (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [13th June.

Stalybridge Hyde Mossley and Dukinfield Transport and Electricity Board Bill.
Read First Time. [8th June.

Tiverton Corporation Bill.
Read Second Time. [8th June.

Walsall Corporation Bill.
Committed. [7th June.

West Surrey Water Bill.
Read Third Time. [13th June.

House of Commons.

Bognor Gas and Electricity Bill.
Read Third Time. [12th June.

Bootle Corporation Bill.
Read First Time. [14th June.

British Overseas Airways Bill.
Read First Time. [12th June.

Civil Defence Bill.
Read Third Time. [14th June.

Croydon Corporation Bill.
Reported, without Amendment. [8th June.

London Gas Undertakings (Regulations) Bill.
Read First Time. [13th June.

London Passenger Transport Board Bill.
Read Third Time. [13th June.

Marriage (Scotland) Bill.
Reported, with Amendments. [13th June.

Merthyr Tydfil Corporation Bill.
Reported, with Amendments. [8th June.

Milford Haven and Tenby Water Bill.
Read Second Time. [13th June.

Ministry of Health Provisional Order Confirmation (Congleton) Bill.
Read Second Time. [9th June.

Ministry of Health Provisional Order Confirmation (Margate) Bill.
Read Second Time. [9th June.

Ministry of Health Provisional Order Confirmation (Matlock) Bill.
Read Second Time. [9th June.

Ministry of Health Provisional Order (Corsham Water) Bill.
Read Third Time. [13th June.

Ministry of Health Provisional Order (Falmouth) Bill.
Read Second Time. [9th June.

Ministry of Health Provisional Order (Hemel Hempstead Water) Bill.
Read Second Time. [9th June.

Ministry of Health Provisional Order (Heywood and Middleton Water Board) Bill.
Read Second Time. [9th June.

Ministry of Health Provisional Order (Newhaven and Seaford Water) Bill.
Read Third Time. [12th June.

Ministry of Health Provisional Order (Oxford) Bill.
Read Second Time. [9th June.

Ministry of Health Provisional Order (Slough) Bill.
Read Second Time. [9th June.

Ministry of Health Provisional Order (York Water) Bill.
Read Third Time. [9th June.

Ministry of Supply Bill.
Read Second Time. [8th June.

Post Office and Telegraph (Money) Bill.
Read First Time. [8th June.

Public Trustee (General Deposit Fund) Bill.
Read Third Time. 13th June.

St. Helens Corporation (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [9th June.

St. Peter's Chapel Stockport Bill.
Read Second Time. [12th June.

Southend-on-Sea Corporation (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [9th June.

Stalybridge Hyde Mossley and Dukinfield Transport and Electricity Board Bill.
Read Third Time. [8th June.

Stroud District Water Board etc. Bill.
Read Second Time. [12th June.

Tynemouth Corporation Bill.
Read Third Time. [8th June.

Water Supply Bill.
Reported, with Amendments. [8th June.

West Surrey Water Bill.
Read First Time. [13th June.

Legal Notes and News.

Birthday Legal Honours.

PRIVY COUNCILLOR.

HERWALD RAMSBOTHAM, Esq., O.B.E., M.C., M.P. for Lancaster since May, 1929, Parliamentary Secretary to the Board of Education, November, 1931, to June, 1935, and to the Ministry of Agriculture, November, 1935, to 1936. Minister of Pensions since September, 1936. Called to the Bar by the Inner Temple in 1912.

KNIGHTS BACHELOR.

WILLIAM FAWELL ASCROFT, Esq., J.P., D.L. For public services in Preston. Admitted a solicitor in 1901.

SIDNEY BURN, Esq., Indian Civil Service, Puisne Judge of the High Court of Judicature at Fort St. George, Madras.

CECIL THOMAS CARR, Esq., LL.D., Editor of Revised Statutes and Statutory Rules and Orders. Called to the Bar by the Inner Temple in 1902.

OWEN CECIL KIRKPATRICK CORRIE, Esq., Colonial Legal Service, Chief Justice, Fiji, and Chief Judicial Commissioner for the Western Pacific. Called to the Bar by Gray's Inn in 1930.

JOHN FORSTER, Esq., Deputy Umpire under the Unemployment Insurance Acts. Called to the Bar by Gray's Inn in 1919.

WILLIAM WAYMOUTH GIBSON, Esq., President of the Council of The Law Society. Admitted a solicitor in 1899.

ROBERT MCILWAINE, Esq., LL.B., formerly a Judge of the High Court of Southern Rhodesia. For public services.

HUGH RAHERE PANCKRIDGE, Esq., Puisne Judge of the High Court of Judicature at Fort William in Bengal.

Councillor FRANK LEYDEN SARGENT. For political and public services in East Islington. Admitted a solicitor in 1911.

ALFRED WILLIAM EWART WORT, Esq., Puisne Judge of the High Court of Judicature at Patna, Bihar. Called to the Bar by the Middle Temple in 1914.

CHARLES GERAHTY, Esq., Colonial Legal Service, Chief Justice, Trinidad. Called to the Bar by the Middle Temple in 1909.

ORDER OF ST. MICHAEL AND ST. GEORGE.

G.C.M.G.

Sir EDWARD JOHN HARDING, K.C.B., K.C.M.G., Permanent Under-Secretary of State, Dominions Office. Called to the Bar by Lincoln's Inn in 1912.

C.M.G.

EDWARD LARET HALL, Esq., Acting Puisne Judge State of Tasmania.

ORDER OF THE BRITISH EMPIRE.

K.B.E.

The Hon. GEORGE STEPHENSON BEEBY, Chief Judge of the Court of Conciliation and Arbitration, Commonwealth of Australia.

The Hon. PERCIVAL HALSE ROGERS, B.C.L., Judge of the Supreme Court, and Chancellor of the University of Sydney, in the State of New South Wales.

ALBERT HENRY SELF, Esq., C.B., Deputy Under-Secretary of State, Air Ministry. Called to the Bar by Lincoln's Inn in 1922.

C.B.E.

ARTHUR SAMBELL COX, Esq., O.B.E., Assistant Comptroller, Patent Office, Board of Trade. Called to the Bar by the Middle Temple in 1926.

ROBERT DIXON KINGHAM, Esq., O.B.E., Secretary, National Savings Committee. Called to the Bar by the Inner Temple 1912.

Lieutenant-Colonel and Brevet-Colonel JOHN JESTYN LLEWELLIN, O.B.E., M.C., T.D., M.P., Dorsetshire Heavy Regiment, Royal Artillery, Territorial Army. Called to the Bar by the Inner Temple in 1921.

DHIRENDRA NATH MITRA, Esq., Solicitor to the Government of India, Legal Adviser to the King-Emperor's Anti-Tuberculosis Fund Appeal.

ALEXANDER FRANK NOEL THAVENOT, Esq., Judicial Adviser to the Siamese Ministry of Justice. Called to the Bar by Gray's Inn in 1905.

O.B.E.

HAROLD BOSTOCK, Esq., Principal Clerk, Principal Probate Registry, Supreme Court of Judicature.

WILLIAM GEORGE CHAPMAN, Esq., Assistant King's Proctor, Department of H.M. Procurator-General and Treasury Solicitor.

Lieutenant-Colonel and Brevet-Colonel ERIC GORE-BROWNE, D.S.O., T.D., A.D.C., The Leicestershire Yeomanry (Prince Albert's Own), Territorial Army. Called to the Bar by the Inner Temple in 1909.

Major REGINALD HERBERT JERMAN, M.C., Clerk of the Wandsworth Borough Council. Air Raid Precautions Officer for Wandsworth. Admitted a solicitor in 1926.

M.B.E.

JAMSHED FIROZ DASTUR, Esq., Deputy Registrar, High Court, Zanzibar.

CHARLES LOUIS JOHN HOLT, Esq. For political and public services in Preston. Called to the Bar by Gray's Inn in 1912.

MOHAN LAL SAWHNEY, Esq., Barrister-at-Law, Sargodha, Punjab.

IMPERIAL SERVICE ORDER.

COMPANION.

WALTER DACK, Esq., Chief Accountant, Supreme Court Pay Office.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. JAMES WILLOUGHBY JARDINE, K.C., be appointed Attorney-General of the County Palatine of Durham, in the place of the late Mr. Herbert F. Manisty, K.C., and that Mr. GEOFFREY HUGH BENBOW STREATFEILD, K.C., be appointed Solicitor-General of the County Palatine of Durham in the place of Mr. Willoughby Jardine.

The King has approved a recommendation of the Home Secretary that Mr. WILLIAM ALSTON MACFARLANE be appointed Recorder of Halifax in the place of Mr. G. RUSSELL VICK, K.C., who has been appointed Recorder of Newcastle-upon-Tyne. Mr. Macfarlane was called to the Bar by the Inner Temple in 1923.

The following promotion is announced in the Colonial Legal Service: Mr. C. O. PRETHEROE, M.C., at present Crown Counsel for Nigeria, to be Attorney-General for British Guiana.

Mr. W. R. HOWARD, the East Ham stipendiary magistrate, has been appointed a Metropolitan police magistrate. The vacancy was caused by the death of Mr. Griffith-Jones, of Greenwich. Mr. Howard, who is sixty years of age, was called to the Bar by the Middle Temple in 1911. He joined the Northern Circuit and practised in Liverpool until the outbreak of war. He was then granted a commission in the Army, and in 1916 was appointed military representative to the Essex Appeal Tribunal. After the war he transferred to the South-Eastern Circuit and practised in London. In 1935 he was appointed magistrate at East Ham.

Mr. JOHN HERBERT WARREN, J.P., M.A., formerly assistant solicitor to the Birkenhead Corporation and latterly Clerk to the Newton-in-Makerfield Urban District Council, has been appointed Town Clerk of Slough, Lincolnshire. Mr. Warren was admitted a solicitor in 1933.

Mr. K. E. LAUDER, solicitor to the Enfield Urban District Council, has been appointed Deputy Town Clerk of the Borough of Willesden. Mr. Lauder was admitted a solicitor in 1932.

Mr. WALTER WOOD, formerly assistant prosecuting solicitor to the Bradford Corporation, has been appointed prosecuting solicitor to the Swansea Town Council. Mr. Wood was admitted a solicitor in 1937.

Notes.

The public inquiry into the loss of the submarine *Thetis* will be held by Mr. Justice Bucknill, assisted by three assessors.

In accordance with custom, on the first Sunday in Trinity Term, the judges on the rota accompanied the Lord Mayor to St. Paul's Cathedral.

Lord Kinross, K.C., has resigned, because of ill-health, his office as Sheriff of Dumfries and Galloway. Lord Kinross was appointed to this office in November, 1927.

The Canadian Supreme Court's hearing of the Dominion Parliament's petition for the abolition of appeals to the Privy Council is scheduled to open on Monday, 19th June. British Columbia is opposing abolition. The Supreme Court is asked to decide on Ontario's desire that appeals should be limited to civil cases involving more than £2,000.

The Home Secretary has appointed Sir Harold S. Morris, K.C., to hold an inquiry into an application by the rope, twine, and net industry for exemption from the Factories Act, 1937, under which the hours of boys and girls under sixteen will be reduced from forty-eight to forty-four a week after 30th June. The inquiry will be opened on 4th July, at 1, Abbey Garden, Great College Street, S.W.

As from the 30th June next, Mr. H. L. Thornhill will retire from the position of Chief Legal Adviser to the London

Midland & Scottish Railway Company and will then act on behalf of the company in a consultative or advisory capacity on certain special Parliamentary and public matters and will be known as Parliamentary Consultant. Mr. A. Eddy will, from the 1st July, act as Chief Legal Adviser and Solicitor to the company.

In a communication sent to local authorities, the Minister of Health, Mr. Walter Elliot, explains that it will be their duty in the event of war to furnish returns giving particulars of property in their area which has been damaged by enemy action. The return is required in connection with claims for compensation for war damage and in consideration of questions of emergency repairs to housing accommodation and other essential buildings.

On Monday last Lord Macmillan resigned, owing to pressure of other duties, from the chairmanship of the executive council of the International Law Association, to which he was elected fourteen months ago in succession to Lord Blanesburgh. It is understood that Lord Alness will be proposed as successor to Lord Macmillan, who will continue to hold the position of deputy chairman. The honorary general secretary of the association, Mr. Wyndham A. Bewes, also is resigning, on account of ill-health.

A story with an authentic legal background has been written for the cinema by Sir Patrick Hastings, K.C. The film will have Mr. Emlyn Williams in the principal part, that of a law student who eventually becomes famous at the Bar. The picture will show much of the historic procedure and settings of the British legal system, and it is hoped that some sequences will be made in one of the Inns. Sir Patrick Hastings is the author of four plays, but this is his first story written for the film.

Wills and Bequests.

Mr. Adam William Burn, solicitor, of Kensington Palace Mansions, W., formerly of Moorgate Buildings, E.C., left £33,779, with net personalty £33,685.

Mr. Robert Oldham Burnett, solicitor, of Chislehurst, left £28,859, with net personalty £27,185. He left £200 to Portsmouth Diocesan Board of Finance, for St. John the Baptist Church, Rudmore, Portsmouth; £100 conditionally to the Chichester Diocesan Board of Finance for the maintenance of the Old Hove Church and churchyard; £200 to Trinity College, Cambridge, Mission; £200 to Royal National Lifeboat Institution; £100 to Friends of Canterbury Cathedral; £100 to Friends of Winchester Cathedral.

Mr. George Edward Carpenter, solicitor, of Bayswater and of Bedford Row, W.C., left £41,424, with net personalty £32,987. He left £250 to Charterhouse Mission in Southwark; £150 to Westbourne Park Ladies' Home; and £100 to the London Fever Hospital.

Mr. George Coleman, solicitor, of Haywards Heath, left £20,339, with net personalty £12,515.

Mr. Norman Henry Oldham, of Cobham, Surrey, Official Solicitor, Queen Anne's Bounty, left £11,912, with net personalty £8,268.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT NO. 1.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
June 19	Ritchie	Blaker	Andrews
,, 20	Blaker	More	Jones
,, 21	More	Reader	Ritchie
,, 22	Reader	Andrews	Blaker
,, 23	Andrews	Jones	More
,, 24	Jones	Ritchie	Reader

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT.	MR. JUSTICE SIMONDS. Non-Witness.	MR. JUSTICE CROSSMAN.	MR. JUSTICE MORTON. Non-Witness.
	Witness. Mr.	Mr.	Witness. Mr.	Mr.
June 19	Ritchie	More	Reader	Jones
,, 20	Blaker	Reader	Andrews	Ritchie
,, 21	More	Andrews	Jones	Blaker
,, 22	Reader	Jones	Ritchie	More
,, 23	Andrews	Ritchie	Blaker	Reader
,, 24	Jones	Blaker	More	Andrews

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 22nd June 1939.

	Div. Months.	Middle Price 14 June 1939.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	105½	3 15 10	3 11 7
Consols 2½%	JAJO	68xd	3 13 6	—
War Loan 3½% 1952 or after ..	JD	94¼	3 14 3	—
Funding 4% Loan 1960-90	MN	107⅛	3 14 5	3 9 10
Funding 3% Loan 1959-69	AO	93⅛	3 4 2	3 6 11
Funding 2½% Loan 1952-57 ..	JD	92	2 19 9	3 6 11
Funding 2½% Loan 1956-61 ..	AO	86	2 18 2	3 8 3
Victory 4% Loan Av. life 21 years	MS	107¼	3 14 7	3 10 2
Conversion 5% Loan 1944–64 ..	MN	109	4 11 9	2 16 5
Conversion 3½% Loan 1961 or after	AO	95	3 13 8	—
Conversion 3% Loan 1948-53 ..	MS	98⅛	3 1 1	3 3 2
Conversion 2½% Loan 1944-49 ..	AO	95½	2 12 4	3 0 7
National Defence Loan 3% 1954-58	JJ	95½xd	3 3 0	3 6 7
Local Loans 3% Stock 1912 or after	JAJO	80½xd	3 14 6	—
Bank Stock	AO	318	3 15 6	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	77xd	3 11 5	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	83xd	3 12 3	—
India 4½% 1950-55	MN	107	4 4 1	3 14 3
India 3½% 1931 or after	JAJO	86xd	4 1 5	—
India 3% 1948 or after	JAJO	73½xd	4 1 8	—
Sudan 4½% 1939-73 Av. life 27 years	FA	108	4 3 4	4 0 2
Sudan 4% 1974 Red. in part after 1950	MN	103½	3 17 4	3 12 3
Tanganyika 4% Guaranteed 1951-71	FA	105	3 16 2	3 9 8
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	102½xd	4 7 10	3 8 7
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	86½	2 17 10	3 11 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	97½	4 2 1	4 2 10
Australia (Commonw'th) 3% 1955-58	AO	84½	3 11 0	4 3 11
*Canada 4% 1953-58	MS	107	3 14 9	3 7 3
Natal 3% 1929-49	JJ	95½xd	3 2 10	3 11 10
New South Wales 3½% 1930-50 ..	JJ	93xd	3 15 3	4 6 2
New Zealand 3% 1945	AO	91	3 5 11	4 15 2
Nigeria 4% 1963	AO	104	3 16 11	3 14 10
Queensland 3½% 1950-70	JJ	88xd	3 19 7	4 3 11
South Africa 3½% 1953-73	JD	97½	3 11 10	3 12 8
Victoria 3½% 1929-49	AO	93	3 15 3	4 7 7
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	78½xd	3 16 5	—
Croydon 3% 1940–60	AO	90	3 6 8	3 13 9
*Essex County 3½% 1952-72 ..	JD	99	3 10 8	3 11 0
Leeds 3% 1927 or after	JJ	78xd	3 16 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase..	JAJO	91xd	3 16 11	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	66½	3 15 2	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	79	3 15 11	—
Manchester 3% 1941 or after ..	FA	78	3 16 11	—
Metropolitan Consd. 2½% 1920-49 ..	MJSD	94	2 13 2	3 4 2
Metropolitan Water Board 3% "A" 1963-2003	AO	81¼	3 13 7	3 15 2
Do. do. 3% "B" 1934-2003 ..	MS	83	3 12 3	3 13 10
Do. do. 3% "E" 1953-73 ..	JJ	92½	3 4 10	3 7 6
*Middlesex County Council 4% 1952-72	MN	104	3 16 11	3 12 3
* Do. do. 4½% 1950-70	MN	107	4 4 1	3 14 3
Nottingham 3% Irredeemable ..	MN	78	3 16 11	—
Sheffield Corp. 3½% 1968	JJ	99	3 10 8	3 11 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	98	4 1 8	—
Gt. Western Rly. 4½% Debenture ..	JJ	104½	4 6 1	—
Gt. Western Rly. 5% Debenture ..	JJ	114½	4 7 4	—
Gt. Western Rly. 5% Rent Charge ..	FA	112½	4 8 11	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	107½	4 13 0	—
Gt. Western Rly. 5% Preference ..	MA	89½	5 11 9	—
Southern Rly. 4% Debenture ..	JJ	95xd	4 4 3	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½xd	3 18 10	3 18 3
Southern Rly. 5% Guaranteed ..	MA	110	4 10 11	—
Southern Rly. 5% Preference ..	MA	97½	5 2 7	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.